OFFICIAL CODE OF GEORGIA ANNOTATED

2014 Supplement

Including Acts of the 2014 Regular Session of the General Assembly

Prepared by

The Code Revision Commission

The Office of Legislative Counsel

and

The Editorial Staff of LexisNexis®

Published Under Authority of the State of Georgia

Volume 14B

2011 Edition

Title 16. Crimes and Offenses (Chapters 12—17)

Including Annotations to the Georgia Reports
and the Georgia Appeals Reports

Place in Pocket of Corresponding Volume of Main Set

LexisNexis®
Charlottesville, Virginia

ISBN 978-0-327-11074-3 (set)
ISBN 978-1-4224-8300-8

5068612

(Pub.41805)

THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2014 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through March 21, 2014. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through March 21, 2014.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
John Marshall Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Sixth Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2014 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2014 supplement pamphlets and in the bound volumes of the Code.

Contacting LexisNexis®:

Visit our Website at http://www.lexisnexis.com for an online bookstore, technical support, customer service, and other company information.

If you have questions or suggestions concerning the Official Code of Georgia Annotated, please write or call toll free at 1-800-833-9844, fax at 1-518-487-3584, or email us at Customer.Support@lexisnexis.com. Direct written inquiries to:

LexisNexis®
Attn: Official Code of Georgia Annotated
701 East Water Street
Charlottesville, Virginia 22902-5389

TITLE 16

CRIMES AND OFFENSES

VOLUME 14

Chap.

VOLUME 14A

VOLUME 14B

Law reviews. — For note, "Seen But Not Heard: An Argument for Granting Evidentiary Hearings to Weigh the Credibility of Recanted Testimony," see 46 Ga. L. Rev. 213 (2011).

CHAPTER 12

OFFENSES AGAINST PUBLIC HEALTH AND MORALS

Article 1

General Provisions

Sec.

Article 2

Gambling and Related Offenses

Part 1

Gambling

Article 3

Obscenity and Related Offenses

Part 1

General Provisions

Part 2

Offenses Related to Minors Generally

Part 3

Sale or Distribution of Harmful Materials to Minors

Article 4

Offenses Against Public Transportation

Part 2

Transportation Passenger Safety

Article 5

Abortion

Article 7

Sale or Distribution to, or Possession by, Minors of Cigarettes and Tobacco Related Objects

ARTICLE 1

GENERAL PROVISIONS

16-12-1. Contributing to the delinquency, unruliness, or deprivation of a minor.

(a) As used in this Code section, the term:

(1) "Delinquent act" means a delinquent act as defined in Code Section 15-11-2.

(2) "Felony" means any act which constitutes a felony under the laws of this state, the laws of any other state of the United States, or the laws of the United States.

(3) "Minor" means any individual who is under the age of 17 years who is alleged to have committed a delinquent act or any individual under the age of 18 years.

(4) "Serious injury" means an injury involving a broken bone, the loss of a member of the body, the loss of use of a member of the body, the substantial disfigurement of the body or of a member of the body, an injury which is life threatening, or any sexual abuse of a child under 16 years of age by means of an act described in subparagraph (a)(4)(A), (a)(4)(G), or (a)(4)(I) of Code Section 16-12-100.

(5) "Service provider" means an entity that is registered with the Department of Human Services pursuant to Article 7 of Chapter 5 of Title 49 or a child welfare agency as defined in Code Section 49-5-12 or agent or employee acting on behalf of such entity or child welfare agency.

(b) A person commits the offense of contributing to the delinquency or dependency of a minor or causing a child to be a child in need of services when such person:

(1) Knowingly and willfully encourages, causes, abets, connives, or aids a minor in committing a delinquent act;

(2) Knowingly and willfully encourages, causes, abets, connives, or aids a minor in committing an act which would cause such minor to be a child in need of services as such term is defined in Code Section 15-11-2; provided, however, that this paragraph shall not apply to a service provider that notifies the minor's parent, guardian, or legal custodian of the minor's location and general state of well-being as soon as possible but not later than 72 hours after the minor's acceptance of services; provided, further, that such notification shall not be required if:

(A) The service provider has reasonable cause to believe that the minor has been abused or neglected and makes a child abuse report pursuant to Code Section 19-7-5;

(B) The minor will not disclose the name of the minor's parent, guardian, or legal custodian, and the Division of Family and Children Services within the Department of Human Services is notified within 72 hours of the minor's acceptance of services; or

(C) The minor's parent, guardian, or legal custodian cannot be reached, and the Division of Family and Children Services within the Department of Human Services is notified within 72 hours of the minor's acceptance of services;

(3) Willfully commits an act or acts or willfully fails to act when such act or omission would cause a minor to be adjudicated to be a dependent child as such term is defined in Code Section 15-11-2;

(4) Knowingly and willfully hires, solicits, engages, contracts with, conspires with, encourages, abets, or directs any minor to commit any felony which encompasses force or violence as an element of the offense or delinquent act which would constitute a felony which encompasses force or violence as an element of the offense if committed by an adult;

(5) Knowingly and willfully provides to a minor any firearm as defined in Code Section 16-11-127.1, any dangerous weapon as defined in Code Section 16-11-121, or any hazardous object as defined in Code Section 20-2-751 to commit any felony which encompasses force or violence as an element of the offense or delinquent act which would constitute a felony which encompasses force or violence as an element of the offense if committed by an adult; or

(6) Knowingly and willfully hires, solicits, engages, contracts with, conspires with, encourages, abets, or directs any minor to commit any smash and grab burglary which would constitute a felony if committed by an adult.

(c) It shall not be a defense to the offense provided for in this Code section that the minor has not been formally adjudged to have committed a delinquent act or has not been adjudged to be a dependent child or a child in need of services.

(d) A person convicted pursuant to paragraph (1) or (2) of subsection (b) of this Code section shall be punished as follows:

(1) Upon conviction of the first or second offense, the defendant shall be guilty of a misdemeanor and shall be fined not more than $1,000.00 or shall be imprisoned for not more than 12 months, or both fined and imprisoned; and

(2) Upon the conviction of the third or subsequent offense, the defendant shall be guilty of a felony and shall be fined not less than $1,000.00 nor more than $5,000.00 or shall be imprisoned for not less than one year nor more than three years, or both fined and imprisoned.

(d.1) A person convicted pursuant to paragraph (3) of subsection (b) of this Code section shall be punished as follows:

(1) Upon conviction of an offense which resulted in the serious injury or death of a child, without regard to whether such offense was a first, second, third, or subsequent offense, the defendant shall be guilty of a felony and shall be punished as provided in subsection (e) of this Code section;

(2) Upon conviction of an offense which does not result in the serious injury or death of a child and which is the first conviction, the defendant shall be guilty of a misdemeanor and shall be fined not more than $1,000.00 or shall be imprisoned for not more than 12 months, or both fined and imprisoned;

(3) Upon conviction of an offense which does not result in the serious injury or death of a child and which is the second conviction, the defendant shall be guilty of a high and aggravated misdemeanor and shall be fined not less than $1,000.00 nor more than $5,000.00 or shall be imprisoned for not less than one year, or both fined and imprisoned; and

(4) Upon the conviction of an offense which does not result in the serious injury or death of a child and which is the third or subsequent conviction, the defendant shall be guilty of a felony and shall be fined not less than $10,000.00 or shall be imprisoned for not less than one year nor more than five years, or both fined and imprisoned.

(e) A person convicted pursuant to paragraph (4), (5), or (6) of subsection (b) or paragraph (1) of subsection (d.1) of this Code section shall be guilty of a felony and punished as follows:

(1) Upon conviction of the first offense, the defendant shall be imprisoned for not less than one nor more than ten years; and

(2) Upon conviction of the second or subsequent offense, the defendant shall be imprisoned for not less than three years nor more than 20 years. (Ga. L. 1953, Nov.-Dec. Sess., p. 321, § 1; Ga. L. 1982, p. 968, § 1; Ga. L. 1994, p. 1158, § 1; Ga. L. 1995, p. 10, § 16; Ga. L. 1996, p. 273, § 1; Ga. L. 1999, p. 232, § 1; Ga. L. 2004, p. 57, § 5; Ga. L. 2010, p. 1147, § 7/HB 1104; Ga. L. 2011, p. 470, § 3/SB 94; Ga. L. 2013, p. 294, § 4-12/HB 242; Ga. L. 2014, p. 432, § 2-7/HB 826; Ga. L. 2014, p. 599, § 3-3/HB 60.)

The 2013 amendment, effective January 1, 2014, rewrote paragraph (a)(3), which formerly read: "'Minor' means any individual who is under the age of 17 years or any individual under the age of 18 years."; in the introductory language of subsection (b), substituted "delinquency or dependency of a minor or causing a child to be a child in need of services" for "delinquency, unruliness, or deprivation of a minor"; in paragraph (b)(2), substituted "a child in need of services as such term is" for "found to be an unruly child as such is" near the beginning and substituted "well-being" for "well being" near the end; in paragraph (b)(3), substituted "to be adjudicated to be a dependent child as such term is" for "to be found to be a deprived child as such is" ; and, in subsection (c), substituted "adjudged to be a dependent child or a child in need of services" for "found to be unruly or deprived". See editor's note for applicability.

The 2014 amendments. — The first 2014 amendment, effective July 1, 2014, in paragraph (b)(5), substituted "firearm" for "weapon" near the beginning, substituted "Code Section 16-11-127.1, any dangerous weapon" for "paragraph (2) of subsection (a) of Code Section 16-11-127.1 or any weapon", and inserted ", or any hazardous object as defined in Code Section 20-2-751" near the middle. The second 2014 amendment, effective July 1, 2014, deleted "paragraph (2) of subsection (a) of" preceding "Code Section 16-11-127.1" near the beginning of paragraph (b)(5).

Editor's notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

Ga. L. 2014, p. 599, § 1-1/HB 60, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Safe Carry Protection Act.'"

JUDICIAL DECISIONS

Accusation insufficient as to date of offense. — Accusation that alleged contributing to the delinquency of a minor and electronically furnishing obscene material to a minor within a two and a half month time frame was subject to a demurrer because the state gave no explanation as to why an investigating officer was unable to ascertain the dates of the offenses from the victim's computer. State v. Meeks, 309 Ga. App. 855, 711 S.E.2d 403 (2011).

Evidence held sufficient for conviction.

Evidence that a minor was in a park with the defendant, that the minor registered positive on an alcosensor, that the minor was observed reaching into a bag containing beer as the minor sat on a park bench, that the defendant's breath smelled of alcohol, and that the defendant observed the minor drinking beer in the park, was sufficient to allow the conclusion that the defendant had at least connived in the minor's possession and consumption of alcohol. Boyd v. State, 314 Ga. App. 883, 726 S.E.2d 135 (2012).

Evidence, taken together, authorized the jury to find that the defendant was guilty of burglary and contributed to the delinquency of a minor as the victim's neighbor identified the defendant as the person the neighbor saw standing on an air conditioner unit while beating on the victim's kitchen window, the point of entry for the burglary was that window and, just minutes after the neighbor saw the defendant at the window, the victim observed the defendant and a child walking away from the victim's residence carrying an item that was taken during the burglary. Williams v. State, 320 Ga. App. 831, 740 S.E.2d 766 (2013).

Sentence appropriate.

Defendant failed to demonstrate that the defendant's sentence of ten years for cruelty to children in the second degree, O.C.G.A. § 16-5-70(c), and contributing to the deprivation of a minor, O.C.G.A. § 16-12-1(b)(3), were unlawful because the trial court found that the defendant's defense was based upon lies and asserted in bad faith; the sentences were within the statutory limits for each of the crimes for which the defendant was convicted pursuant to O.C.G.A. §§ 16-5-70(e)(2) and 16-12-1(b). Staib v. State, 309 Ga. App. 785, 711 S.E.2d 362 (2011).

Deprivation of a minor conviction did not merge with cruelty to children conviction. — Trial court did not err in failing to merge the defendant's misdemeanor convictions for contributing to the deprivation of a minor, O.C.G.A. § 16-12-1(b)(3), with the defendant's corresponding felony convictions for cruelty to children in the second degree, O.C.G.A. § 16-5-70(c), pursuant to the "required evidence" test, the offenses did not merge as a matter of law. The offenses of cruelty to children in the second degree and contributing to the deprivation of a minor each have at least one essential element that the other does not: causing the child cruel or excessive physical or mental pain and wilfully failing to provide the child with the proper care necessary for his or her health, respectively. Staib v. State, 309 Ga. App. 785, 711 S.E.2d 362 (2011).

Rule of lenity did not apply to multiple convictions.

Trial court did not err in failing to apply the rule of lenity and sentencing the defendant for the misdemeanor convictions of contributing to the deprivation of a minor, O.C.G.A. § 16-12-1(b)(3), instead of for the felony charges of cruelty to children, O.C.G.A. § 16-5-70(c), because the rule of lenity did not apply since different facts were required to prove cruelty to children and contributing to the deprivation of a minor; the defendant's conviction for contributing to the deprivation of a minor required proof that the defendant failed to provide the children with the proper care necessary for the children's health. Staib v. State, 309 Ga. App. 785, 711 S.E.2d 362 (2011).

16-12-1.1. Child, family, or group-care facility operators prohibited from employing or allowing to reside or be domiciled persons with certain past criminal violations.

(a) As used in this Code section the term:

(1) "Facility" means any child care learning center, family day-care home, group-care facility, group day-care home, or similar facility at which any child who is not a member of an operator's family is received for pay for supervision and care, without transfer of legal custody, for fewer than 24 hours per day.

(2) "Operator" means any person who applies for or holds a permit or license to operate a facility.

(b) Unless otherwise authorized as provided in Code Section 20-1A-43, it shall be unlawful for any operator of a facility to knowingly have any person reside at, be domiciled at, or be employed at any such facility if such person has been convicted of or has entered a plea of guilty or nolo contendere to or has been adjudicated a delinquent for:

(1) A violation of Code Section 16-4-1, relating to criminal attempt, when the crime attempted is any of the crimes specified in paragraphs (2) through (10) of this subsection;

(2) A violation of Code Section 16-5-23.1, relating to battery, when the victim at the time of such offense was a minor;

(3) A violation of any provision of Chapter 6 of this title, relating to sexual offenses, when the victim at the time of such offense was a minor;

(4) A violation of Code Section 16-12-1, relating to contributing to the delinquency of a minor;

(5) A violation of Code Section 16-5-1;

(6) A violation of Code Section 16-5-2, relating to voluntary manslaughter;

(7) A violation of Code Section 16-6-2, relating to aggravated sodomy;

(8) A violation of Code Section 16-6-3, relating to rape;

(9) A violation of Code Section 16-6-22.2, relating to aggravated sexual battery; or

(10) A violation of Code Section 16-8-41, relating to armed robbery, if committed with a firearm.

(c) Any person violating subsection (b) of this Code section shall be guilty of a misdemeanor. (Code 1981, § 16-12-1.1, enacted by Ga. L. 1997, p. 713, § 1; Ga. L. 2013, p. 135, § 12/HB 354; Ga. L. 2013, p. 285, § 1/HB 350; Ga. L. 2014, p. 444, § 2-7/HB 271.)

The 2013 amendments. — The first 2013 amendment, effective July 1, 2013, substituted "child care learning center" for "day-care center" in paragraph (a)(1). The second 2013 amendment, effective July 1, 2013, for the purposes of promulgating rules and regulations, and January 1, 2014, for all other purposes, substituted "Unless otherwise authorized as provided in Code Section 20-1A-43, it" for "It" at the beginning of the introductory paragraph of subsection (b).

The 2014 amendment, effective July 1, 2014, deleted ", relating to murder" at the end of paragraph (b)(5).

16-12-4. Cruelty to animals.

(a) As used in this Code section, the term:

(1) "Animal" shall not include any fish nor shall such term include any pest that might be exterminated or removed from a business, residence, or other structure.

(2) "Malice" means:

(A) An actual intent, which may be shown by the circumstances connected to the act, to cause the particular harm produced without justification or excuse; or

(B) The wanton and willful doing of an act with an awareness of a plain and strong likelihood that a particular harm may result.

(b) A person commits the offense of cruelty to animals when he or she:

(1) Causes physical pain, suffering, or death to an animal by any unjustifiable act or omission; or

(2) Having intentionally exercised custody, control, possession, or ownership of an animal, fails to provide to such animal adequate food, water, sanitary conditions, or ventilation that is consistent with what a reasonable person of ordinary knowledge would believe is the normal requirement and feeding habit for such animal's size, species, breed, age, and physical condition.

(c) Any person convicted of the offense of cruelty to animals shall be guilty of a misdemeanor; provided, however, that any person who has had a prior adjudication of guilt for the offense of cruelty to animals or aggravated cruelty to animals, or an adjudication of guilt for the commission of an offense under the laws of any other state, territory, possession, or dominion of the United States, or of any foreign nation recognized by the United States, which would constitute the offense of cruelty to animals or aggravated cruelty to animals if committed in this state, including an adjudication of a juvenile for the commission of an act, whether committed in this state or in any other state, territory, possession, or dominion of the United States, or any foreign nation recognized by the United States, which if committed by an adult would constitute the offense of cruelty to animals or aggravated cruelty to animals, upon the second or subsequent conviction of cruelty to animals shall be guilty of a misdemeanor of a high and aggravated nature.

(d) A person commits the offense of aggravated cruelty to animals when he or she:

(1) Maliciously causes the death of an animal;

(2) Maliciously causes physical harm to an animal by depriving it of a member of its body, by rendering a part of such animal's body useless, or by seriously disfiguring such animal's body or a member thereof;

(3) Maliciously tortures an animal by the infliction of or subjection to severe or prolonged physical pain;

(4) Maliciously administers poison to an animal, or exposes an animal to any poisonous substance, with the intent that the substance be taken or swallowed by the animal; or

(5) Having intentionally exercised custody, control, possession, or ownership of an animal, maliciously fails to provide to such animal

adequate food, water, sanitary conditions, or ventilation that is consistent with what a reasonable person of ordinary knowledge would believe is the normal requirement and feeding habit for such animal's size, species, breed, age, and physical condition to the extent that the death of such animal results or a member of its body is rendered useless or is seriously disfigured.

(e) Any person convicted of the offense of aggravated cruelty to animals shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than five years, a fine not to exceed $15,000.00, or both; provided, however, that any person who has had a prior adjudication of guilt for the offense of aggravated cruelty to animals, or an adjudication of guilt for the commission of an offense under the laws of any other state, territory, possession, or dominion of the United States, or of any foreign nation recognized by the United States, which would constitute the offense of aggravated cruelty to animals if committed in this state, including an adjudication of a juvenile for the commission of an act, whether committed in this state or in any other state, territory, possession, or dominion of the United States, or any foreign nation recognized by the United States, which if committed by an adult would constitute the offense of aggravated cruelty to animals, upon the second or subsequent conviction of aggravated cruelty to animals shall be punished by imprisonment for not less than one nor more than ten years, a fine not to exceed $100,000.00, or both.

(f) Before sentencing a defendant for any conviction under this Code section, the sentencing judge may require psychological evaluation of the offender and shall consider the entire criminal record of the offender.

(g) The provisions of this Code section shall not be construed as prohibiting conduct which is otherwise permitted under the laws of this state or of the United States, including, but not limited to, agricultural, animal husbandry, butchering, food processing, marketing, scientific research, training, medical, zoological, exhibition, competitive, hunting, trapping, fishing, wildlife management, or pest control practices or the authorized practice of veterinary medicine nor to limit in any way the authority or duty of the Department of Agriculture, Department of Natural Resources, any county board of health, any law enforcement officer, dog, animal, or rabies control officer, humane society, veterinarian, or private landowner protecting his or her property.

(h)(1) In addition to justification and excuse as provided in Article 2 of Chapter 3 of this title, a person shall be justified in injuring or killing an animal when and to the extent that he or she reasonably believes that such act is necessary to defend against an imminent threat of injury or damage to any person, other animal, or property.

(2) A person shall not be justified in injuring or killing an animal under the circumstances set forth in paragraph (1) of this subsection when:

(A) The person being threatened is attempting to commit, committing, or fleeing after the commission or attempted commission of a crime;

(B) The person or other animal being threatened is attempting to commit or committing a trespass or other tortious interference with property; or

(C) The animal being threatened is not lawfully on the property where the threat is occurring.

(3) The method used to injure or kill an animal under the circumstances set forth in paragraph (1) of this subsection shall be designed to be as humane as is possible under the circumstances. A person who humanely injures or kills an animal under the circumstances indicated in this subsection shall incur no civil liability or criminal responsibility for such injury or death. (Code 1933, § 26-2802, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1992, p. 1654, § 1; Ga. L. 2000, p. 754, § 12; Ga. L. 2014, p. 492, § 1/HB 863.)

The 2014 amendment, effective July 1, 2014, rewrote this Code section.

JUDICIAL DECISIONS

Jury instructions. — There was no plain error in the trial court's charge to the jury that no criminal liability would attach if the defendant killed a neighbor's dog in order to protect livestock because the trial court's charge on animal cruelty, as a whole, was consistent with the language of O.C.G.A. § 16-12-4, and it adequately explained to the jury that a person was not prohibited from killing an animal if necessary to protect his or her person or property or that of another. Futch v. State, 314 Ga. App. 294, 723 S.E.2d 714 (2012).

Direct evidence supported conviction. — Evidence was sufficient to establish that the defendant killed a neighbor's dog without justification because the defendant had previously told the neighbor that the defendant shot and killed the dog; pursuant to former O.C.G.A. § 24-1-1(3), those prior admissions were direct evidence that the defendant killed the dog. Futch v. State, 314 Ga. App. 294, 723 S.E.2d 714 (2012).

Circumstantial evidence supported conviction. — Circumstantial evidence was sufficient to support the defendant's conviction for cruelty to animals in violation of O.C.G.A. § 16-12-4(b) for killing a neighbor's dog because there was evidence that the defendant had a proclivity to kill dogs on the defendant's property, the defendant killed a dog around the time frame that the neighbor's dog went missing, and the neighbor's dog never expressed any aggressive behavior towards other animals. Futch v. State, 314 Ga. App. 294, 723 S.E.2d 714 (2012).

RESEARCH REFERENCES

ALR. — Validity, construction, and application of criminal statutes and ordinances to prosecution for dogfighting; 68 ALR6th 115.

Validity, construction, and application of statutes and ordinances to prosecution for cockfighting, 69 ALR6th 207.

ARTICLE 2

GAMBLING AND RELATED OFFENSES

PART 1

GAMBLING

16-12-20. Definitions.

As used in this part, the term:

(1) "Bet" means an agreement that, dependent upon chance even though accompanied by some skill, one stands to win or lose something of value. A bet does not include:

(A) Contracts of indemnity or guaranty or life, health, property, or accident insurance; or

(B) An offer of a prize, award, or compensation to the actual contestants in any bona fide contest for the determination of skill, speed, strength, or endurance or to the owners of animals, vehicles, watercraft, or aircraft entered in such contest.

(2) "Gambling device" means:

(A) Any contrivance which for a consideration affords the player an opportunity to obtain money or other thing of value, the award of which is determined by chance even though accompanied by some skill, whether or not the prize is automatically paid by contrivance;

(B) Any slot machine or any simulation or variation thereof;

(C) Any matchup or lineup game machine or device, operated for any consideration, in which two or more numerals, symbols, letters, or icons align in a winning combination on one or more lines vertically, horizontally, diagonally, or otherwise, without assistance by the player. Use of skill stops shall not be considered assistance by the player; or

(D) Any video game machine or device, operated for any consideration, for the play of poker, blackjack, any other card game, or keno or any simulation or variation of any of the foregoing,

including, but not limited to, any game in which numerals, numbers, or any pictures, representations, or symbols are used as an equivalent or substitute for cards in the conduct of such game.

Any item described in subparagraph (B), (C), or (D) of this paragraph shall be a prohibited gambling device subject to and prohibited by this part, notwithstanding any inference to the contrary in any other law of this state.

(3) "Gambling place" means any real estate, building, room, tent, vehicle, boat, or other property whatsoever, one of the principal uses of which is the making or settling of bets; the receiving, holding, recording, or forwarding of bets or offers to bet; or the conducting of a lottery or the playing of gambling devices.

(4) "Lottery" means any scheme or procedure whereby one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win such prize, whether such scheme or procedure is called a pool, lottery, raffle, gift, gift enterprise, sale, policy game, or by some other name. Except as otherwise provided in Code Section 16-12-35, a lottery shall also include the payment of cash or other consideration or the payment for merchandise or services and the option to participate in or play, even if others can participate or play for free, a no skill game or to participate for cash, other consideration, other evidence of winnings, or other noncash prizes by lot or in a finite pool on a computer, mechanical device, or electronic device whereby the player is able to win a cash or noncash prize, other consideration, or other evidence of winnings. A lottery shall also include the organization of chain letter or pyramid clubs as provided in Code Section 16-12-38. A lottery shall not mean a:

(A) Promotional giveaway or contest which conforms with the qualifications of a lawful promotion specified in paragraph (16) of subsection (b) of Code Section 10-1-393;

(B) Scheme whereby a business gives away prizes to persons selected by lot if such prizes are made on the following conditions:

(i) Such prizes are conducted as advertising and promotional undertakings in good faith solely for the purpose of advertising the goods, wares, and merchandise of such business;

(ii) No person to be eligible to receive such prize shall be required to:

(I) Pay any tangible consideration to the operator of such business in the form of money or other property or thing of value;

(II) Purchase any goods, wares, merchandise, or anything of value from such business; or

(III) Be present or be asked to participate in a seminar, sales presentation, or any other presentation, by whatever name denominated, in order to win such prizes; and

(iii) The prizes awarded shall be noncash prizes and cannot be awarded based upon the playing of a game on a computer, mechanical device, or electronic device at a place of business in this state;

(C) Raffle authorized under Code Section 16-12-22.1; or

(D) National or regional promotion, contest, or sweepstakes conducted by any corporation or wholly owned subsidiary or valid franchise of such corporation, either directly or through another entity, provided that, at the time of such promotion, contest, or sweepstakes, such corporation:

(i) Is registered under the federal Securities Exchange Act of 1934; and

(ii) Has total assets of not less than $100 million.

The provisions of this part shall not be applicable to games offered by the Georgia Lottery Corporation pursuant to Chapter 27 of Title 50. (Code 1933, § 26-2701, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1975, p. 1072, § 2; Ga. L. 1982, p. 1661, § 3; Ga. L. 1985, p. 437, § 1; Ga. L. 1986, p. 1313, § 3; Ga. L. 1987, p. 1386, § 3; Ga. L. 1995, p. 832, § 1; Ga. 2001, Ex. Sess., p. 312, § 1; Ga. L. 2012, p. 1136, § 2/SB 431.)

The 2012 amendment, effective May 2, 2012, in paragraph (4), added the second sentence of the introductory paragraph; deleted "and" at the end of division (4)(B)(i); substituted "and" for "or" at the end of subdivision (4)(B)(ii)(III); added division (4)(B)(iii); added "; or" at the end of subparagraph (4)(C); added subparagraph (4)(D); and added the undesignated paragraph at the end. See editor's note for applicability.

Editor's notes. — Ga. L. 2012, p. 1136, § 4/SB 431, not codified by the General Assembly, provides, in part, that this Code section shall apply to conduct that occurs on and after May 2, 2012. It is not the intention of this Act to abate any prosecution undertaken for conduct occurring under the law in effect prior to such date, and any offense committed before May 2, 2012, shall be prosecuted and punished under the statutes in effect at the time the offense was committed.

16-12-22. Commercial gambling.

JUDICIAL DECISIONS

Forfeiture of gambling devices. — Trial court did not err in issuing interlocutory injunctions and continuing receiverships over store property seized pursuant

to O.C.G.A. § 16-14-7 based on alleged video gambling activity in violation of O.C.G.A. § 16-12-22 and racketeering activity under O.C.G.A. § 16-14-3(8) and (9). Remand was required, however, for consideration of whether the forfeitures were excessive fines in violation of U.S. Const., amend. VIII. Patel v. State, 289 Ga. 479, 713 S.E.2d 381 (2011).

16-12-29. Competent witnesses.

Cross references. — Competency of witnesses generally, § 24-6-601 et seq.

16-12-31. Seizure and disposition of funds or other things of value used for gambling.

Reserved. Repealed by Ga. L. 1982, p. 2325, § 1, effective November 1, 1982.

Editor's notes. — Ga. L. 2013, p. 141, § 16/HB 79, reserved the designation of this Code section, effective April 24, 2013.

16-12-35. Applicability of part; penalty for violation.

(a) As used in this Code section, the term "some skill" means any presence of the following factors, alone or in combination with one another:

(1) A learned power of doing a thing competently;

(2) A particular craft, art, ability, strategy, or tactic;

(3) A developed or acquired aptitude or ability;

(4) A coordinated set of actions, including, but not limited to, eye-hand coordination;

(5) Dexterity, fluency, or coordination in the execution of learned physical or mental tasks or both;

(6) Technical proficiency or expertise;

(7) Development or implementation of strategy or tactics in order to achieve a goal; or

(8) Knowledge of the means or methods of accomplishing a task.

The term some skill refers to a particular craft, coordinated effort, art, ability, strategy, or tactic employed by the player to affect in some way the outcome of the game played on a bona fide coin operated amusement machine as defined in paragraph (2) of Code Section 50-27-70. If a player can take no action to affect the outcome of the game, the bona fide coin operated amusement machine does not meet the "some skill" requirement of this Code section.

(b) Nothing in this part shall apply to a coin operated game or device designed and manufactured for bona fide amusement purposes only which may by application of some skill entitle the player to earn replays of the game or device at no additional cost and to discharge the accumulated free replays only by reactivating the game or device for each accumulated free replay or by reactivating the game or device for a portion or all of the accumulated free plays in a single play. This subsection shall not apply, however, to any game or device classified by the United States government as requiring a federal gaming tax stamp under applicable provisions of the Internal Revenue Code or any item described as a gambling device in subparagraph (B), (C), or (D) of paragraph (2) of Code Section 16-12-20.

(c)(1) Nothing in this part shall apply to a crane game machine or device meeting the requirements of paragraph (2) of this subsection.

(2) A crane game machine or device acceptable for the purposes of paragraph (1) of this subsection shall meet the following requirements:

(A) The machine or device must be designed and manufactured only for bona fide amusement purposes and must involve at least some skill in its operation;

(B) The machine or device must reward a winning player exclusively with free replays or merchandise contained within the machine itself and such merchandise must be limited to noncash merchandise, prizes, toys, gift certificates, or novelties, each of which has a wholesale value not exceeding $5.00. A player may be rewarded with both free replays and noncash merchandise, prizes, toys, or novelties for a single play of the game or device as provided in this Code section;

(C) The player of the machine or device must be able to control the timing of the use of the claw or grasping device to attempt to pick up or grasp a prize, toy, or novelty;

(D) The player of the machine or device must be made aware of the total time which the machine or device allows during a game for the player to maneuver the claw or grasping device into a position to attempt to pick up or grasp a prize, toy, or novelty;

(E) The claw or grasping device must not be of a size, design, or shape that prohibits picking up or grasping a prize, toy, or novelty contained within the machine or device; and

(F) The machine or device must not be classified by the United States government as requiring a federal gaming stamp under applicable provisions of the Internal Revenue Code.

(d)(1) Nothing in this part shall apply to a coin operated game or device designed and manufactured only for bona fide amusement purposes which involves some skill in its operation if it rewards the player exclusively with:

(A) Free replays;

(B) Merchandise limited to noncash merchandise, prizes, toys, gift certificates, or novelties, each of which has a wholesale value of not more than $5.00 received for a single play of the game or device;

(C) Points, tokens, vouchers, tickets, or other evidence of winnings which may be exchanged for rewards set out in subparagraph (A) of this paragraph or subparagraph (B) of this paragraph or a combination of rewards set out in subparagraph (A) and subparagraph (B) of this paragraph; or

(D) Any combination of rewards set out in two or more of subparagraph (A), (B), or (C) of this paragraph.

This subsection shall not apply, however, to any game or device classified by the United States government as requiring a federal gaming stamp under applicable provisions of the Internal Revenue Code or any item described as a gambling device in subparagraph (B), (C), or (D) of paragraph (2) of Code Section 16-12-20.

(2) A player of bona fide coin operated amusement games or devices described in paragraph (1) of this subsection may accumulate winnings for the successful play of such bona fide coin operated amusement games or devices through tokens, vouchers, points, or tickets. Points may be accrued on the machine or device. A player may carry over points on one play to subsequent plays. A player may redeem accumulated tokens, vouchers, or tickets for noncash merchandise, prizes, toys, gift certificates, or novelties so long as the amount of tokens, vouchers, or tickets received does not exceed $5.00 for a single play.

(e) Any person who gives to any other person money for free replays on coin operated games or devices described in subsection (b), (c), or (d) of this Code section shall be guilty of a misdemeanor.

(f) Any person owning or possessing an amusement game or device described in subsection (c) or (d) of this Code section or any person employed by or acting on behalf of any such person who gives to any other person money for any noncash merchandise, prize, toy, gift certificate, or novelty received as a reward in playing any such amusement game or device shall be guilty of a misdemeanor.

(g) Any person owning or possessing an amusement game or device described in subsection (b), (c), or (d) of this Code section or any person

employed by or acting on behalf of any such person who gives to any other person money as a reward for the successful play or winning of any such amusement game or device shall be guilty of a misdemeanor of a high and aggravated nature.

(g.1) Any location owner or location operator or person employed by a location owner or location operator who violates subsection (h) or (i) of this Code section for the second separate offense shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not less than one nor more than five years, a fine not to exceed $25,000.00, or both, as well as loss of location license and all other state licenses.

(h) Any gift certificates, tokens, vouchers, tickets, or other evidence of winnings awarded under subsection (c) or (d) of this Code section must be redeemable only at the premises on which the game or device is located. It shall be unlawful for any person to provide to any other person as a reward for play on any such game or device any gift certificate, token, voucher, ticket, or other evidence of winning which is redeemable or exchangeable for any thing of value at any other premises. It shall be unlawful for any person at any premises other than those on which the game or device is located to give any thing of value to any other person for any gift certificate, token, voucher, ticket, or other evidence of winning received by such other person from play on such game or device. Any person who violates this subsection shall be guilty of a misdemeanor of a high and aggravated nature. This subsection shall not apply to any ticket or product of the Georgia Lottery Corporation.

(i) The merchandise, prizes, toys, gift certificates, novelties, or rewards which may be awarded under subsection (c) or (d) of this Code section may not include or be redeemable or exchangeable for any firearms, alcohol, or tobacco. Any person who violates this subsection shall be guilty of a misdemeanor of a high and aggravated nature.

(j) Any other laws to the contrary notwithstanding, this part shall not be applicable to the manufacturing, processing, selling, possessing, or transporting of any printed materials, equipment, devices, or other materials used or designated for use in a legally authorized lottery nor shall it be applicable to the manufacturing, processing, selling, possessing, or transporting of any gaming equipment, devices, or other materials used or designated for use only in jurisdictions in which the use of such items is legal. This part shall in no way prohibit communications between persons in this state and persons involved with such legal lotteries or gaming devices relative to such printed materials, equipment, devices, or other materials or prohibit demonstrations of same within this state.

(k) Any person, location owner, or location operator who places, provides, or displays a bona fide coin operated amusement machine and

offers it to play for consideration in Georgia in an establishment for which the location owner or location operator is not licensed or in a private residence shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not less than one nor more than five years, a fine not to exceed $25,000.00, or both. (Code 1933, § 26-2713, enacted by Ga. L. 1976, p. 1158, § 1; Ga. L. 1978, p. 1779, § 1; Ga. L. 1985, p. 886, § 1; Ga. L. 1991, p. 1396, § 1; Ga. L. 1991, p. 1398, § 1; Ga. L. 1992, p. 1489, § 1; Ga. L. 1996, p. 309, § 1; Ga. L. 1997, p. 689, § 1; Ga. L. 1998, p. 563, § 1; Ga. L. 1999, p. 1224, § 1; Ga. L. 2001, Ex. Sess., p. 312, § 2; Ga. L. 2007, p. 47, § 16/SB 103; Ga. L. 2013, p. 37, § 2-1/HB 487.)

The 2013 amendment, effective April 10, 2013, substituted "Code Section 50-27-70" for "Code Section 48-17-1" in the concluding paragraph of subsection (a); added subsection (g.1); added the last sentence of subsection (h); deleted "or any lottery ticket or other item enabling participation in any lottery" following "tobacco" at the end of the first sentence of subsection (i); and added subsection (k).

Editor's notes. — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited."

JUDICIAL DECISIONS

Skill in operation of machine. — There was no evidence that any of the gambling machines seized for civil forfeiture proceedings from stores involved some skill in the machine's operation as required under O.C.G.A. § 16-12-35(d)(1); the sole evidence was that a player simply pressed a button to play these machines. Patel v. State, 289 Ga. 479, 713 S.E.2d 381 (2011).

16-12-37. Dogfighting.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of criminal statutes and ordinances to prosecution for dogfighting, 68 ALR6th 115.

16-12-38. Pyramid promotional schemes; exceptions; penalties.

(a) As used in this Code section, the term:

(1) "Compensation" means a payment of any money, thing of value, or financial benefit.

(2) "Consideration" means the payment of cash or the purchase of goods, services, or intangible property, and does not include the purchase of goods or services furnished at cost to be used in making sales and not for resale, or time and effort spent in pursuit of sales or recruiting activities.

(3) "Inventory" includes both goods and services, including company produced promotional materials, sales aids, and sales kits that the plan or operation requires independent salespersons to purchase.

(4) "Inventory loading" means that the plan or operation requires or encourages its independent salespersons to purchase inventory in an amount which unreasonably exceeds that which the salesperson can expect to resell for ultimate consumption or to use or consume in a reasonable time period.

(5) "Participant" means a person who joins a plan or operation.

(6) "Person" means an individual, a corporation, a partnership, or any association or unincorporated organization.

(7) "Promote" means to contrive, prepare, establish, plan, operate, advertise, or to otherwise induce or attempt to induce another person to be a participant.

(8) "Pyramid promotional scheme" means any plan or operation in which a participant gives consideration for the right to receive compensation that is derived primarily from the recruitment of other persons as participants into the plan or operation rather than from the sale of goods, services, or intangible property to participants or by participants to others.

(b)(1) No person may establish, promote, operate, or participate in any pyramid promotional scheme. A limitation as to the number of persons who may participate or the presence of additional conditions affecting eligibility for the opportunity to receive compensation under the plan does not change the identity of the plan as a pyramid promotional scheme. It is not a defense under this subsection that a person, on giving consideration, obtains goods, services, or intangible property in addition to the right to receive compensation.

(2) Nothing in this Code section may be construed to prohibit a plan or operation, or to define a plan or operation as a pyramid promotional scheme, based on the fact that participants in the plan or operation give consideration in return for the right to receive compensation based upon purchases of goods, services, or intangible property by participants for personal use, consumption, or resale so long as the plan or operation does not promote or induce inventory loading and complies with the cancellation requirements of subsection (d) of Code Section 10-1-415.

(3) Any person who participates in a pyramid promotional scheme shall be guilty of a misdemeanor of a high and aggravated nature. Any person who establishes, promotes, or operates a pyramid promotional scheme shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years.

(4) Nothing in this Code section shall be construed so as to include a "multilevel distribution company," as defined in paragraph (6) of Code Section 10-1-410, which is operating in compliance with Part 3 of Article 15 of Chapter 1 of Title 10. (Code 1981, § 16-12-38, enacted by Ga. L. 1985, p. 437, § 2; Ga. L. 1988, p. 1868, § 3; Ga. L. 1992, p. 6, § 16; Ga. L. 2005, p. 657, § 1/SB 141; Ga. L. 2012, p. 775, § 16/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised language in paragraph (b)(4).

Part 2

Bingo

16-12-55. Certification of tax-exempt status of organization; issuance of certificate of licensure.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

ARTICLE 3

OBSCENITY AND RELATED OFFENSES

Law reviews. — For article, "Evil Angel Eulogy: Reflections on the Passing of the Obscenity Defense in Copyright," see 20 J. Intell. Prop. L. 209 (2013).

PART 1

GENERAL PROVISIONS

16-12-80. Distributing obscene material; obscene material defined; penalty.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Cited in In the Matter of Levin, 289 Ga. 170, 709 S.E.2d 808 (2011).

16-12-81. Distribution of material depicting nudity or sexual conduct; penalty.

JUDICIAL DECISIONS

Act alleged not prohibited. — Trial court erred in denying defendant's general demurrer, because the act alleged in the indictment, the sending of a nude image of defendant's genitals from his cell phone to the victim's cell phone, was not prohibited by O.C.G.A. § 16-12-81, which was limited to tangible material that had a tangible envelope or container. Warren v. State, 294 Ga. 589, 755 S.E.2d 171 (2014).

16-12-84. Public indecency in plays, nightclub acts, and motion pictures.

Reserved. Repealed by Ga. L. 1981, p. 915, § 1, effective April 9, 1981.

Editor's notes. — Ga. L. 2013, p. 141, § 16/HB 79, reserved the designation of this Code section, effective April 24, 2013.

PART 2

OFFENSES RELATED TO MINORS GENERALLY

16-12-100. Sexual exploitation of children; reporting violation; forfeiture; penalties.

(a) As used in this Code section, the term:

(1) "Minor" means any person under the age of 18 years.

(2) "Performance" means any play, dance, or exhibit to be shown to or viewed by an audience.

(3) "Producing" means producing, directing, manufacturing, issuing, or publishing.

(4) "Sexually explicit conduct" means actual or simulated:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) Bestiality;

(C) Masturbation;

(D) Lewd exhibition of the genitals or pubic area of any person;

(E) Flagellation or torture by or upon a person who is nude;

(F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;

(G) Physical contact in an act of apparent sexual stimulation or gratification with any person's unclothed genitals, pubic area, or buttocks or with a female's nude breasts;

(H) Defecation or urination for the purpose of sexual stimulation of the viewer; or

(I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

(5) "Visual medium" means any film, photograph, negative, slide, magazine, or other visual medium.

(b)(1) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

(2) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

(3) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of any performance.

(4) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of any performance.

(5) It is unlawful for any person knowingly to create, reproduce, publish, promote, sell, distribute, give, exhibit, or possess with intent

to sell or distribute any visual medium which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

(6) It is unlawful for any person knowingly to advertise, sell, purchase, barter, or exchange any medium which provides information as to where any visual medium which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct can be found or purchased.

(7) It is unlawful for any person knowingly to bring or cause to be brought into this state any material which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

(8) It is unlawful for any person knowingly to possess or control any material which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

(c) A person who, in the course of processing or producing visual or printed matter either privately or commercially, has reasonable cause to believe that the visual or printed matter submitted for processing or producing depicts a minor engaged in sexually explicit conduct shall immediately report such incident, or cause a report to be made, to the Georgia Bureau of Investigation or the law enforcement agency for the county in which such matter is submitted. Any person participating in the making of a report or causing a report to be made pursuant to this subsection or participating in any judicial proceeding or any other proceeding resulting therefrom shall in so doing be immune from any civil or criminal liability that might otherwise be incurred or imposed, providing such participation pursuant to this subsection is made in good faith.

(d) The provisions of subsection (b) of this Code section shall not apply to:

(1) The activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses;

(2) Legitimate medical, scientific, or educational activities; or

(3) Any person who creates or possesses a visual medium depicting only himself or herself engaged in sexually explicit conduct.

(e)(1) A person who is convicted of an offense under this Code section shall forfeit to the State of Georgia such interest as the person may have in:

(A) Any property constituting or directly derived from gross profits or other proceeds obtained from such offense; and

(B) Any property used, or intended to be used, to commit such offense.

(2) In any action under this Code section, the court may enter such restraining orders or take other appropriate action, including acceptance of performance bonds, in connection with any interest that is subject to forfeiture.

(3) The court shall order forfeiture of property referred to in paragraph (1) of this subsection if the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture.

(4) The provisions of subsection (u) of Code Section 16-13-49 shall apply for the disposition of any property forfeited under this subsection. In any disposition of property under this subsection, a convicted person shall not be permitted to acquire property forfeited by such person.

(f)(1) The following property shall be subject to forfeiture to the State of Georgia:

(A) Any material or equipment used, or intended for use, in producing, reproducing, transporting, shipping, or receiving any visual medium in violation of this Code section;

(B) Any visual medium produced, transported, shipped, or received in violation of this Code section, or any material containing such depiction; provided, however, that any such property so forfeited shall be destroyed by the appropriate law enforcement agency after it is no longer needed in any court proceedings; or

(C) Any property constituting or directly derived from gross profits or other proceeds obtained from a violation of this Code section;

except that no property of any owner shall be forfeited under this paragraph, to the extent of the interest of such owner, by reason of an act or omission established by such owner to have been committed or omitted without knowledge or consent of such owner.

(2) The procedure for forfeiture and disposition of forfeited property under this subsection shall be as provided for forfeitures under Code Section 16-13-49.

(g)(1) Except as otherwise provided in paragraphs (2) and (3) of this subsection, any person who violates a provision of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five nor more than 20 years and by a fine of not more than $100,000.00; provided, however, that if the person so convicted is a member of the immediate family of the victim, no fine shall be imposed.

(2) Any person who violates subsection (c) of this Code section shall be guilty of a misdemeanor.

(3) Any person who violates paragraph (1), (5), (7), or (8) of subsection (b) of this Code section shall be guilty of a misdemeanor if:

(A) The minor depicted was at least 14 years of age at the time the visual medium was created;

(B) The visual medium was created with the permission of the minor depicted; and

(C) The defendant was 18 years of age or younger at the time of the offense and:

(i) The defendant's violation of such paragraphs did not involve the distribution of such visual medium to another person; or

(ii) In the court's discretion, and when the prosecuting attorney and the defendant have agreed, if the defendant's violation of such paragraphs involved the distribution of such visual medium to another person but such distribution was not for the purpose of:

(I) Harassing, intimidating, or embarrassing the minor depicted; or

(II) For any commercial purpose. (Ga. L. 1978, p. 2193, § 1; Ga. L. 1983, p. 1437, § 1; Ga. L. 1987, p. 1164, § 1; Ga. L. 1988, p. 11, §§ 1, 2; Ga. L. 1991, p. 886, § 3; Ga. L. 1995, p. 957, § 6; Ga. L. 1996, p. 6, § 16; Ga. L. 2003, p. 573, § 2; Ga. L. 2013, p. 663, § 1/HB 156.)

The 2013 amendment, effective July 1, 2013, substituted the present provisions of subsection (d) for the former provisions, which read: "The provisions of subsection (b) of this Code section shall not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities."; in paragraph (g)(1), substituted "paragraphs (2) and (3)" for "paragraph (2)" near the beginning and substituted "$100,000.00; provided, however, that if" for "$100,000.00. In the event, however, that" near the end; and added paragraph (g)(3).

JUDICIAL DECISIONS

Probable cause.

Trial court did not err in denying the defendant's motion to suppress evidence seized from a search warrant authorizing entry into the defendant's home because the affidavit submitted in support of the warrant provided a sufficient basis for the magistrate to make a practical, commonsense decision that there was a fair probability that evidence of sexual exploitation of children would be found at the defendant's residence; the National Center for Missing and Exploited Children forwarded the information it received from a security specialist employed by the host of the website to the Georgia Bureau of Investigation (GBI), and the affidavit of a special agent with the GBI set forth facts that showed both the reliability and basis of knowledge of the specialist. James v.

State, 312 Ga. App. 130, 717 S.E.2d 713 (2011), cert. denied, No. S12C0347, 2012 Ga. LEXIS 227 (Ga. 2012).

Admission of DVDs. — Defendant's conviction for sexual exploitation of children in violation of O.C.G.A. § 16-12-100(b)(8) was affirmed because the jury viewed DVDs of the movie files found on the defendant's computer and in the defendant's home, which depicted small children, who were "clearly prepubescent" and was authorized to conclude that the children were under the age of 18. Henderson v. State, 320 Ga. App. 553, 740 S.E.2d 280 (2013).

Evidence sufficient to support conviction.

Evidence was sufficient to convict a defendant for the sexual exploitation of children as the evidence indicated that files containing child pornography had not come to be on the defendant's computer in some passive way, and the defendant admitted that the defendant shared files on the Internet using certain file sharing programs, including the program used to download the images of child pornography. Haynes v. State, 317 Ga. App. 400, 731 S.E.2d 83 (2012).

Defendant's conviction on 21 counts of sexual exploitation of a minor, in violation of O.C.G.A. § 16-12-100(b)(8), was supported by sufficient evidence based on the photographs on a compact disc containing pictures of young girls exhibited nude on stage in the lewd exhibition of the girls' genitals. Scarborough v. State, 317 Ga. App. 523, 731 S.E.2d 396 (2012).

When an investigator searched the recreational vehicle pursuant to the warrant and found a defendant's computer, which was the same computer which the investigator's internet investigation showed was sharing child pornography files, and contained the video files used as evidence, the evidence was sufficient to find the defendant committed sexual exploitation of children in violation of O.C.G.A. § 16-12-100(b)(8). Hines v. State, 317 Ga. App. 541, 731 S.E.2d 782 (2012).

Evidence was sufficient to convict the defendant of 20 counts of sexual exploitation of children because the defendant knowingly possessed or controlled pornographic images of children as the child pornography images found in the cache folder on the defendant's computer had all been intentionally accessed on the date the officer observed the defendant with the computer; the officer observed the images on the defendant's computer and watched as the defendant attempted to close and minimize the pornographic images of children; and the images were not generated in a passive way in pop-up windows. Sorg v. State, 324 Ga. App. 595, 751 S.E.2d 196 (2013).

Evidence sufficient when images viewed on computer. — Evidence was sufficient to sustain the defendant's 20 convictions for sexual exploitation of children because the child pornography images on the defendant's computer had all been intentionally accessed on the date the officer observed the defendant viewing the images on the defendant's computer, and the images were not pop-up images that the defendant had not intentionally viewed. Sorg v. State, 324 Ga. App. 595, 751 S.E.2d 196 (2013).

16-12-100.1. Electronically furnishing obscene material to minors.

(a) As used in this Code section, the term:

(1) "Bulletin board system" means a computer data and file service that is accessed wirelessly or by physical connection to store and transmit information.

(2) "CD-ROM" means a compact disc with read only memory which has the capacity to store audio, video, and written materials and is used by computers to reveal the above-said material.

(3) "Electronically furnishes" means:

(A) To make available by electronic storage device, including floppy disks and other magnetic storage devices, or by CD-ROM; or

(B) To make available by allowing access to information stored in a computer, including making material available by operating a computer bulletin board system.

(4) "Harmful to minors" means that quality of description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:

(A) Taken as a whole, predominantly appeals to the prurient, shameful, or morbid interest of minors;

(B) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

(C) Is, when taken as a whole, lacking in serious literary, artistic, political, or scientific value for minors.

(5) "Minor" means an unmarried person younger than 18 years of age.

(6) "Sadomasochistic abuse" means flagellation or torture by or upon a person who is nude or clad in undergarments or in revealing or bizarre costume or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

(7) "Sexual conduct" means human masturbation, sexual intercourse, or any touching of the genitals, pubic areas, or buttocks of the human male or female or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(8) "Sexual excitement" means the condition of human male or female genitals or the breasts of the female when in a state of sexual stimulation.

(b) A person commits the crime of electronically furnishing obscene materials to minors if:

(1) Knowing or having good reason to know the character of the material furnished, the person electronically furnishes to an individual whom the person knows or should have known is a minor:

(A) Any picture, photograph, drawing, or similar visual representation or image of a person or portion of a human body which depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors; or

(B) Any written or aural matter that contains material of the nature described in subparagraph (A) of this paragraph or contains

explicit verbal descriptions or narrative accounts of sexual conduct, sexual excitement, or sadomasochistic abuse;

(2) The offensive portions of the material electronically furnished to the minor are not merely an incidental part of an otherwise nonoffending whole;

(3) The material furnished to the minor, taken as a whole, lacks serious literary, artistic, political, or scientific value; and

(4) The material furnished to the minor, taken as a whole, is harmful to minors in that it appeals to and incites prurient interest.

(c) Except as provided in subsection (d) of this Code section, any person who violates this Code section shall be guilty of a misdemeanor of a high and aggravated nature.

(d) Any person who violates this Code section shall be guilty of a misdemeanor if:

(1) At the time of the offense, the minor receiving the obscene materials was at least 14 years of age;

(2) The receipt of the materials was with the permission of the minor; and

(3) The defendant was 18 years of age or younger. (Code 1981, § 16-12-100.1, enacted by Ga. L. 1993, p. 735, § 1; Ga. L. 2013, p. 663, § 2/HB 156.)

The 2013 amendment, effective July 1, 2013, substituted "wirelessly or by physical connection" for "by telephone line" in paragraph (a)(1); added "system" at the end of subparagraph (a)(3)(B); substituted "Except as provided in subsection (d) of this Code section, any" for "Any" in subsection (c); and added subsection (d).

JUDICIAL DECISIONS

Accusation insufficient as to date of offense. — Accusation that alleged contributing to the delinquency of a minor and electronically furnishing obscene material to a minor within a two and a half month time frame was subject to a demurrer because the state gave no explanation as to why an investigating officer was unable to ascertain the dates of the offenses from the victim's computer. State v. Meeks, 309 Ga. App. 855, 711 S.E.2d 403 (2011).

16-12-100.2. Computer or electronic pornography and child exploitation prevention.

(a) This Code section shall be known and may be cited as the "Computer or Electronic Pornography and Child Exploitation Prevention Act of 2007."

(b) As used in this Code section, the term:

(1) "Child" means any person under the age of 16 years.

(2) "Electronic device" means any device used for the purpose of communicating with a child for sexual purposes or any device used to visually depict a child engaged in sexually explicit conduct, store any image or audio of a child engaged in sexually explicit conduct, or transmit any audio or visual image of a child for sexual purposes. Such term may include, but shall not be limited to, a computer, cellular phone, thumb drive, video game system, or any other electronic device that can be used in furtherance of exploiting a child for sexual purposes;

(3) "Identifiable child" means a person:

(A) Who was a child at the time the visual depiction was created, adapted, or modified or whose image as a child was used in creating, adapting, or modifying the visual depiction; and

(B) Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature or by electronic or scientific means as may be available.

The term shall not be construed to require proof of the actual identity of the child.

(4) "Sadomasochistic abuse" has the same meaning as provided in Code Section 16-12-100.1.

(5) "Sexual conduct" has the same meaning as provided in Code Section 16-12-100.1.

(6) "Sexual excitement" has the same meaning as provided in Code Section 16-12-100.1.

(7) "Sexually explicit nudity" has the same meaning as provided in Code Section 16-12-102.

(8) "Visual depiction" means any image and includes undeveloped film and video tape and data stored on computer disk or by electronic means which is capable of conversion into a visual image or which has been created, adapted, or modified to show an identifiable child engaged in sexually explicit conduct.

(c)(1) A person commits the offense of computer or electronic pornography if such person intentionally or willfully:

(A) Compiles, enters into, or transmits by computer or other electronic device;

(B) Makes, prints, publishes, or reproduces by other computer or other electronic device;

(C) Causes or allows to be entered into or transmitted by computer or other electronic device; or

(D) Buys, sells, receives, exchanges, or disseminates

any notice, statement, or advertisement, or any child's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purpose of offering or soliciting sexual conduct of or with an identifiable child or the visual depiction of such conduct.

(2) Except as provided in paragraphs (3) and (4) of this subsection, any person convicted of violating paragraph (1) of this subsection shall be punished by a fine of not more than $10,000.00 and by imprisonment for not less than one nor more than 20 years.

(3) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor if:

(A) At the time of the offense, any identifiable child visually depicted was at least 14 years of age when the visual depiction was created;

(B) The visual depiction was created with the permission of such child;

(C) The defendant possessed the visual depiction with the permission of such child; and

(D) The defendant was 18 years of age or younger at the time of the offense and:

(i) The defendant did not distribute the visual depiction to another person; or

(ii) In the court's discretion, and when the prosecuting attorney and the defendant have agreed, if the defendant's violation involved the distribution of such visual depiction to another person but such distribution was not for the purpose of:

(I) Harassing, intimidating, or embarrassing the minor depicted; or

(II) For any commercial purpose.

(4) The prohibition contained in paragraph (1) of this subsection shall not apply to any person who creates or possesses a visual depiction of only himself or herself.

(d)(1) It shall be unlawful for any person intentionally or willfully to utilize a computer wireless service or Internet service, including, but not limited to, a local bulletin board service, Internet chat room, e-mail, instant messaging service, or other electronic device, to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice a child, another person believed by such person to be a child,

any person having custody or control of a child, or another person believed by such person to have custody or control of a child to commit any illegal act by, with, or against a child as described in Code Section 16-6-2, relating to the offense of sodomy or aggravated sodomy; Code Section 16-6-4, relating to the offense of child molestation or aggravated child molestation; Code Section 16-6-5, relating to the offense of enticing a child for indecent purposes; or Code Section 16-6-8, relating to the offense of public indecency, or to engage in any conduct that by its nature is an unlawful sexual offense against a child.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 20 years and by a fine of not more than $25,000.00; provided, however, that if at the time of the offense the victim was at least 14 years of age and the defendant was 18 years of age or younger, then the defendant shall be guilty of a misdemeanor.

(e)(1) A person commits the offense of obscene Internet contact with a child if he or she has contact with someone he or she knows to be a child or with someone he or she believes to be a child via a computer wireless service or Internet service, including, but not limited to, a local bulletin board service, Internet chat room, e-mail, or instant messaging service, and the contact involves any matter containing explicit verbal descriptions or narrative accounts of sexually explicit nudity, sexual conduct, sexual excitement, or sadomasochistic abuse that is intended to arouse or satisfy the sexual desire of either the child or the person, provided that no conviction shall be had for a violation of this subsection on the unsupported testimony of a child.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than ten years or by a fine of not more than $10,000.00; provided, however, that if at the time of the offense the victim was at least 14 years of age and the defendant was 18 years of age or younger, then the defendant shall be guilty of a misdemeanor.

(f)(1) It shall be unlawful for any owner or operator of a computer on-line service, Internet service, local bulletin board service, or other electronic device that is in the business of providing a service that may be used to sexually exploit a child to intentionally or willfully to permit a subscriber to utilize the service to commit a violation of this Code section, knowing that such person intended to utilize such service to violate this Code section. No owner or operator of a public computer on-line service, Internet service, local bulletin board service, or other electronic device that is in the business of providing a service that may be used to sexually exploit a child shall be held liable

on account of any action taken in good faith in providing the aforementioned services.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor of a high and aggravated nature.

(g) The sole fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this Code section shall not constitute a defense to prosecution under this Code section.

(h) A person is subject to prosecution in this state pursuant to Code Section 17-2-1, relating to jurisdiction over crimes and persons charged with commission of crimes generally, for any conduct made unlawful by this Code section which the person engages in while:

(1) Either within or outside of this state if, by such conduct, the person commits a violation of this Code section which involves a child who resides in this state or another person believed by such person to be a child residing in this state; or

(2) Within this state if, by such conduct, the person commits a violation of this Code section which involves a child who resides within or outside this state or another person believed by such person to be a child residing within or outside this state.

(i) Any violation of this Code section shall constitute a separate offense. (Code 1981, § 16-12-100.2, enacted by Ga. L. 1999, p. 232, § 2; Ga. L. 2003, p. 140, § 16; Ga. L. 2003, p. 573, § 3; Ga. L. 2007, p. 47, § 16/SB 103; Ga. L. 2007, p. 283, § 2/SB 98; Ga. L. 2013, p. 663, § 3/HB 156.)

The 2013 amendment, effective July 1, 2013, substituted "Except as provided in paragraphs (3) and (4) of this subsection, any" for "Any" in paragraph (c)(2); added paragraphs (c)(3) and (c)(4); in paragraphs (d)(1) and (e)(1), substituted "wireless service" for "on-line service" and "instant messaging" for "on-line messaging", and added commas following "including" and following "but not limited to" near the beginning; in paragraph (d)(1), near the middle, substituted "child, another" for "child or another", inserted ", any person having custody or control of a child, or another person believed by such person to have custody or control of a child", inserted "by, with, or against a child as", and added a comma following "public indecency" near the end; and, in paragraphs (d)(2) and (e)(2), substituted the present provisions of the proviso for the former provisions, which read: "provided, however, that, if at the time of the offense the victim was 14 or 15 years of age and the defendant was no more than three years older than the victim, then the defendant shall be guilty of a misdemeanor of a high and aggravated nature."

JUDICIAL DECISIONS

Plain meaning of the phrase "seduce, solicit, lure, or entice a child or another person believed by such person to be a child to commit any illegal act" cannot be construed to encompass defendant's communication with only an

adult or a person known to be an adult. Cosmo v. State, 320 Ga. App. 397, 739 S.E.2d 828 (2013).

Jurisdiction established for computer child exploitation offense. — State had jurisdiction to prosecute the defendant for computer child exploitation because the evidence showed that after being told that the person the defendant thought was a 14-year-old girl lived in Georgia, the defendant violated O.C.G.A. § 16-12-100.2 by utilizing computer on-line services to communicate with the purported child and entice the child to meet the defendant to engage in sexual activity. Brown v. State, 321 Ga. App. 798, 743 S.E.2d 474 (2013).

Entrapment not shown by defendant's electronic communication.

When the defendant was charged with using the Internet to seduce, solicit, lure, or entice a child or a person believed to be a child to commit an illegal sex act, under O.C.G.A. § 16-12-100.2(d)(1), attempted aggravated child molestation, under O.C.G.A. §§ 16-4-1 and 16-6-4(c), and attempted child molestation, under O.C.G.A. §§ 16-4-1 and 16-6-4(a), it was not error to deny the defendant's motion for a directed verdict of acquittal based on entrapment because the jury's determination that entrapment did not occur was supported by evidence that: (1) the defendant continued communicating with a person the defendant believed to be 14 years old, including having sexually explicit conversations with the person in which the defendant stated the defendant wanted "a lot of oral," after the defendant learned that the person was 14 years old; (2) the defendant discussed with the person how the person could meet the defendant if the person could not drive, inquired whether the person had ever snuck away from home before, and stated that the defendant believed the union would be legal if the defendant were 16 years old, instead of the defendant's actual age; (3) the defendant left the defendant's home of Tennessee to meet a purportedly 14-year-old girl in order to have sex with the person, which the defendant admitted in the defendant's statements to officers; and (4) the defendant brought condoms with the defendant, which the defendant stated were to prevent any "accidents" in the event the defendant was able to have sex with the person. Millsaps v. State, 310 Ga. App. 769, 714 S.E.2d 661 (2011).

Evidence sufficient to support conviction. — Evidence was sufficient to establish the defendant's guilt of computer pornography and child exploitation in violation of the Computer Pornography and Child Exploitation Prevention Act, O.C.G.A. § 16-12-100.2(d)(1), because the evidence established that the defendant committed the offense by using a computer on-line service to solicit sex from a person who the defendant believed was a fifteen-year-old girl, an act which would have constituted child molestation; although the on-line solicitation crime references child molestation as an underlying purpose, the principal act proscribed by the crime is solicitation and does not require the accomplishment of an act of child molestation. Bolton v. State, 310 Ga. App. 801, 714 S.E.2d 377 (2011).

Evidence insufficient to support conviction. — Defendant's conviction for violating O.C.G.A. § 16-12-100.2(d)(1) was reversed on appeal because insufficient evidence supported the conviction since the state failed to prove that the defendant interacted with a child or a person believed to be a child via the computer seeking sex, and the trial court erred in failing to allow the defendant to assert the defense of entrapment. Cosmo v. State, 320 Ga. App. 397, 739 S.E.2d 828 (2013).

Prior conviction of offense admissible in trial for other sexual crimes. — Because the defendant's prior convictions under O.C.G.A. § 16-12-100.2(d)(1) and (e)(1) and defendant's indictment for aggravated sexual battery, aggravated child molestation, and child molestation alleged crimes that were sexual in nature with minors and involved a lustful disposition, the independent offenses were admissible under Ga. Unif. Super. Ct. R. 31.3(B). Butler v. State, 311 Ga. App. 873, 717 S.E.2d 649 (2011).

Indictment contained inadequate information as to alleged victim. — Trial court did not err in granting the defendant's special demurrer and dismissing the indictment charging the defendant

with attempted child molestation, O.C.G.A. §§ 16-4-1 and 16-6-4, attempted aggravated child molestation, O.C.G.A. §§ 16-4-1 and 16-6-4(c), and computer pornography, O.C.G.A. § 16-12-100.2(d), because the indictment contained inadequate information as to the alleged victim; attempted child molestation, attempted aggravated child molestation, and computer pornography are crimes against a particular person and require the victim to be identified in the indictment, even when the victim was a police officer using a pseudonym. State v. Grube, 315 Ga. App. 885, 729 S.E.2d 42 (2012).

Indictment sufficient with regard to Internet sting operation allegations. — With regard to an indictment charging the defendant with computer pornography, attempted aggravated child molestation, and attempted child molestation arising from an Internet sting operation, the appellate court erred by finding that a second indictment was insufficient to withstand a special demurrer because the indictment identified the victim by the only name which the defendant knew the intended victim by and informed the defendant that the intended victim was not an actual child. State v. Grube, 293 Ga. 257, 744 S.E.2d 1 (2013).

Sufficient indictment charging obscene Internet contact. — Trial court erred by granting the defendant's special demurrer and quashing the indictment charging obscene Internet contact with a child because the indictment identified the victim by the name known to the defendant and informed the defendant that it was someone defendant thought was a 14-year-old girl, which was sufficient, and that the victim may also have been a fictitious persona created by an undercover officer was a fact to be proved at trial and its absence was not a material defect. State v. Cohron, 324 Ga. App. 137, 749 S.E.2d 416 (2013).

Sentence for criminal attempt at child molestation and computer child exploitation. — Because the offenses of criminal attempt to commit child molestation and computer child exploitation each required proof of a fact the other did not, the trial court did not err in sentencing the defendant on both convictions. Brown v. State, 321 Ga. App. 798, 743 S.E.2d 474 (2013).

Cited in Castaneira v. State, 321 Ga. App. 418, 740 S.E.2d 400 (2013).

Part 3

Sale or Distribution of Harmful Materials to Minors

16-12-105. Penalty.

(a) Except as provided in subsection (b) of this Code section, any person who violates any provision of Code Section 16-12-103 or 16-12-104 shall be guilty of a misdemeanor of a high and aggravated nature.

(b) Any person who violates subsection (a) of Code Section 16-12-103 shall be guilty of a misdemeanor if:

(1) The person depicted was at least 14 years of age;

(2) The items described in subsection (a) of Code Section 16-12-103 were furnished or disseminated with the permission of the minor depicted; and

(3) The defendant was 18 years of age or younger at the time of the offense. (Code 1981, § 16-12-105, enacted by Ga. L. 1983, p. 1437, § 2; Ga. L. 2013, p. 663, § 4/HB 156.)

The 2013 amendment, effective July 1, 2013, substituted the present provisions of this Code section for the former provisions, which read: "Any person who violates any provision of Code Section 16-12-103 or 16-12-104 shall be guilty of a misdemeanor of a high and aggravated nature."

ARTICLE 4

OFFENSES AGAINST PUBLIC TRANSPORTATION

Part 2

Transportation Passenger Safety

16-12-123. Bus or rail vehicle hijacking; boarding with concealed weapon; company use of reasonable security measures.

Law reviews. — For article, "Crimes and Offenses," see 27 Ga. St. U.L. Rev. 131 (2011).

JUDICIAL DECISIONS

Evidence sufficient for bus hijacking. — Trial court did not err in denying the defendant's motion for a directed verdict after a jury found the defendant guilty of bus hijacking, O.C.G.A. § 16-12-123(a)(1)(A), because the jury was authorized to conclude beyond a reasonable doubt that the defendant exercised control of the bus by force; the defendant brandished a handgun in the open door of the bus as the defendant ordered a passenger to get off, and the bus driver testified that the driver did not feel free to drive away because the driver felt the driver's life was in danger and the driver did not want to agitate the defendant. Cannon v. State, 310 Ga. App. 262, 712 S.E.2d 645 (2011).

16-12-127. Prohibition on firearms, hazardous substances, knives, or other devices; penalty; affirmative defenses.

Law reviews. — For article, "Crimes and Offenses," see 27 Ga. St. U.L. Rev. 131 (2011).

16-12-129. Defense of self or others an absolute defense to violation under this part.

Defense of self or others, as contemplated by and provided for under Article 2 of Chapter 3 of Title 16, shall be an absolute defense to any violation under this part. (Code 1981, § 16-12-129, enacted by Ga. L. 2014, p. 599, § 1-12/HB 60.)

Effective date. — This Code section became effective July 1, 2014.

Editor's notes. — Ga. L. 2014, p. 599, § 1-1/HB 60, not codified by the General

Assembly, provides: "This Act shall be known and may be cited as the 'Safe Carry Protection Act.'"

ARTICLE 5

ABORTION

16-12-140. Criminal abortion.

(a) A person commits the offense of criminal abortion when, in violation of Code Section 16-12-141, he or she administers any medicine, drugs, or other substance whatever to any woman or when he or she uses any instrument or other means whatever upon any woman with intent to produce a miscarriage or abortion.

(b) A person convicted of the offense of criminal abortion shall be punished by imprisonment for not less than one nor more than ten years. (Ga. L. 1876, p. 113, § 2; Code 1882, § 4337b; Penal Code 1895, § 81; Penal Code 1910, § 81; Code 1933, § 26-1101; Code 1933, §§ 26-1201, 26-1203, enacted by Ga. L. 1968, p. 1249, § 1; Code 1933, § 26-1204, enacted by Ga. L. 1973, p. 635, § 1; Ga. L. 2012, p. 575, § 2/HB 954.)

The 2012 amendment, effective May 1, 2012, for purposes of promulgating rules and regulations and effective for all other purposes on January 1, 2013, in subsection (a), substituted "A person" for "Except as otherwise provided in Code Section 16-12-141, a person" at the beginning, and, near the middle, substituted ", in violation of Code Section 16-12-141, he or she" for "he" and inserted "or she".

Editor's notes. — Ga. L. 2012, p. 575, § 1/HB 954, not codified by the General Assembly, provides that: "The General Assembly makes the following findings:

"(1) At least by 20 weeks after fertilization there is substantial evidence that an unborn child has the physical structures necessary to experience pain;

"(2) There is substantial evidence that, by 20 weeks after fertilization, unborn children seek to evade certain stimuli in a manner which in an infant or an adult would be interpreted as a response to pain;

"(3) Anesthesia is routinely administered to unborn children who have developed 20 weeks or more past fertilization who undergo prenatal surgery;

"(4) Even before 20 weeks after fertilization, unborn children have been observed to exhibit hormonal stress responses to painful stimuli. Such responses were reduced when pain medication was administered directly to such unborn children;

"(4.1) Probable gestational age is an estimate made to assume the closest time to which the fertilization of a human ovum occurred and does not purport to be an exact diagnosis of when such fertilization occurred; and

"(5) It is the purpose of the State of Georgia to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain."

Law reviews. — For article, "Crimes and Offenses," see 27 Ga. St. U.L. Rev. 209 (2011). For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 253 (2012).

16-12-141. Restrictions on the performance of abortions; availability of records.

(a) No abortion is authorized or shall be performed in violation of subsection (a) of Code Section 31-9B-2.

(b)(1) No abortion is authorized or shall be performed after the first trimester unless the abortion is performed in a licensed hospital, in a licensed ambulatory surgical center, or in a health facility licensed as an abortion facility by the Department of Community Health.

(2) An abortion shall only be performed by a physician licensed under Article 2 of Chapter 34 of Title 43.

(c)(1) No abortion is authorized or shall be performed if the probable gestational age of the unborn child has been determined in accordance with Code Section 31-9B-2 to be 20 weeks or more unless the pregnancy is diagnosed as medically futile, as such term is defined in Code Section 31-9B-1, or in reasonable medical judgment the abortion is necessary to:

(A) Avert the death of the pregnant woman or avert serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman. No such condition shall be deemed to exist if it is based on a diagnosis or claim of a mental or emotional condition of the pregnant woman or that the pregnant woman will purposefully engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function; or

(B) Preserve the life of an unborn child.

As used in this paragraph, the term "probable gestational age of the unborn child" has the meaning provided by Code Section 31-9B-1.

(2) In any case described in subparagraph (A) or (B) of paragraph (1) of this subsection, the physician shall terminate the pregnancy in the manner which, in reasonable medical judgment, provides the best opportunity for the unborn child to survive unless, in reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function of the pregnant woman than would another available method. No such greater risk shall be deemed to exist if it is based on a diagnosis or claim of a mental or emotional condition of the pregnant woman or that the pregnant woman will purposefully engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function. If the child is capable of sustained life, medical aid then available must be rendered.

(d) Hospital or other licensed health facility records shall be available to the district attorney of the judicial circuit in which the hospital or health facility is located. (Code 1933, § 26-1202, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1973, p. 635, § 1; Ga. L. 1997, p. 142, § 1; Ga. L. 2005, p. 1450, § 4/HB 197; Ga. L. 2009, p. 453, §§ 1-4, 1-6/HB 228; Ga. L. 2011, p. 705, §§ 6-3, 6-5/HB 214; Ga. L. 2012, p. 575, § 2/HB 954.)

The 2012 amendment, effective May 1, 2012, for purposes of promulgating rules and regulations and effective for all other purposes on January 1, 2013, rewrote this Code section.

Editor's notes. — Ga. L. 2012, p. 575, § 1/HB 954, not codified by the General Assembly, provides that: "The General Assembly makes the following findings:

"(1) At least by 20 weeks after fertilization there is substantial evidence that an unborn child has the physical structures necessary to experience pain;

"(2) There is substantial evidence that, by 20 weeks after fertilization, unborn children seek to evade certain stimuli in a manner which in an infant or an adult would be interpreted as a response to pain;

"(3) Anesthesia is routinely administered to unborn children who have developed 20 weeks or more past fertilization who undergo prenatal surgery;

"(4) Even before 20 weeks after fertilization, unborn children have been observed to exhibit hormonal stress responses to painful stimuli. Such responses were reduced when pain medication was administered directly to such unborn children;

"(4.1) Probable gestational age is an estimate made to assume the closest time to which the fertilization of a human ovum occurred and does not purport to be an exact diagnosis of when such fertilization occurred; and

"(5) It is the purpose of the State of Georgia to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain."

Law reviews. — For article, "Crimes and Offenses," see 27 Ga. St. U.L. Rev. 209 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011). For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 253 (2012).

16-12-141.1. Disposal of aborted fetuses; reporting requirements; penalties; public report; confidentiality of identity of physicians filing reports.

(a)(1) Every hospital and clinic in which abortions are performed or occur spontaneously, and any laboratory to which the aborted fetuses are delivered, shall provide for the disposal of the aborted fetuses by cremation, interment, or other manner approved of by the commissioner of public health. The hospital, clinic, or laboratory may complete any laboratory tests necessary for the health of the woman or her future offspring prior to disposing of the aborted fetus.

(2) Each hospital, clinic, and laboratory shall report, on a form of the type and confidentiality provided for in subsection (d) of Code Section 16-12-141, and provided by the commissioner of public health, the manner in which it disposes of the aborted fetus. Such reports shall be made annually by December 31 and whenever the

method of disposal changes. The commissioner of public health shall provide forms for reporting under this Code section.

(b) Any hospital, clinic, or laboratory violating the provisions of subsection (a) of this Code section shall be punished by a fine of not less than $1,000.00 nor more than $5,000.00.

(c) Within 90 days after May 10, 2005, the Department of Human Resources (now known as the Department of Public Health for these purposes) shall prepare a reporting form for physicians which shall include:

(1) The number of females whose parent or guardian was provided the notice required in paragraph (1) of subsection (a) of Code Section 15-11-682 by the physician or such physician's agent; of that number, the number of notices provided personally under subparagraphs (a)(1)(A) and (a)(1)(B) of Code Section 15-11-682 and the number of notices provided by mail under subparagraph (a)(1)(C) of Code Section 15-11-682; and, of each of those numbers, the number of females who, to the best of the reporting physician's information and belief, went on to obtain the abortion;

(2) The number of females upon whom the physician performed an abortion without providing to the parent or guardian of a minor the notice required by subsection (a) of Code Section 15-11-682; and of that number, the number of females for which subsection (b) of Code Section 15-11-682 and Code Section 15-11-686 were applicable;

(3) The number of abortions performed upon a female by the physician after receiving judicial authorization pursuant to subsection (b) of Code Section 15-11-682 and Code Section 15-11-684; and

(4) The same information described in paragraphs (1), (2), and (3) of this subsection with respect to females for whom a guardian or conservator has been appointed.

(d) The Department of Public Health shall ensure that copies of the reporting forms described in subsection (c) of this Code section, together with a reprint of this Code section, are provided:

(1) Within 120 days after May 10, 2005, to all health facilities licensed as an abortion facility by the Department of Human Resources (now known as the Department of Community Health for these purposes);

(2) To each physician licensed or who subsequently becomes licensed to practice medicine in this state at the same time as official notification to that physician that the physician is so licensed; and

(3) By December 1 of every year, other than the calendar year in which forms are distributed in accordance with paragraph (1) of this

subsection, to all health facilities licensed as an abortion facility by the Department of Community Health.

(e) By February 28 of each year following a calendar year in any part of which this subsection was in effect, each physician who provided, or whose agent provided, the notice described in subsection (a) of Code Section 15-11-682 and any physician who knowingly performed an abortion upon a female or upon a female for whom a guardian or conservator had been appointed because of a finding of incompetency during the previous calendar year shall submit to the Department of Public Health a copy of the form described in subsection (c) of this Code section with the requested data entered accurately and completely.

(f) Reports that are submitted more than 30 days following the due date shall be subject to a late fee of $500.00 for that period and the same fee for each additional 30 day period or portion of a 30 day period in which they remain overdue. Any physician required to report in accordance with this Code section who submits an incomplete report or fails to submit a report for more than one year following the due date may, in an action brought by the Department of Public Health, be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or be subject to sanctions for civil contempt.

(g) By June 30 of each year, the Department of Public Health shall issue a public report providing statistics for the previous calendar year compiled from all the reports covering that year submitted in accordance with this Code section for each of the items listed in subsection (c) of this Code section. The report shall also include statistics which shall be obtained by the Administrative Office of the Courts giving the total number of petitions or motions filed under subsection (b) of Code Section 15-11-682 and, of that number, the number in which the court appointed a guardian ad litem, the number in which the court appointed counsel, the number in which the judge issued an order authorizing an abortion without notification, the number in which the judge denied such an order, and, of the last, the number of denials from which an appeal was filed, the number of such appeals that resulted in the denials being affirmed, and the number of such appeals that resulted in reversals of such denials. Each report shall also provide the statistics for all previous calendar years for which such a public statistical report was required to be issued, adjusted to reflect any additional information from late or corrected reports. The Department of Public Health shall ensure that none of the information included in the public reports could reasonably lead to the identification of any individual female or of any female for whom a guardian or conservator has been appointed.

(h) The Department of Public Health may by regulation alter the dates established by paragraph (3) of subsection (d) and subsections (e)

and (g) of this Code section or consolidate the forms or reports to achieve administrative convenience or fiscal savings or to reduce the burden of reporting requirements so long as reporting forms are sent to all facilities licensed as an abortion facility by the Department of Community Health at least once every year and the report described in subsection (g) of this Code section is issued at least once each year.

(i) The Department of Public Health shall ensure that the names and identities of the physicians filing reports under this Code section shall remain confidential. The names and identities of such physicians shall not be subject to Article 4 of Chapter 18 of Title 50. (Code 1981, § 16-12-141.1, enacted by Ga. L. 1985, p. 1421, § 1; Ga. L. 2005, p. 1450, § 5/HB 197; Ga. L. 2009, p. 453, § 1-6/HB 228; Ga. L. 2011, p. 705, §§ 6-3, 6-5/HB 214; Ga. L. 2013, p. 294, § 4-13/HB 242.)

The 2013 amendment, effective January 1, 2014, substituted "Code Section 15-11-682" for "Code Section 15-11-112" three times in paragraph (c)(1), twice in paragraph (c)(2), once in paragraph (c)(3), and once in subsections (e) and (g); substituted "Code Section 15-11-686" for "Code Section 15-11-116" in paragraph (c)(2); and substituted "Code Section 15-11-684" for "Code Section 15-11-114" in paragraph (c)(3). See editor's note for applicability.

Editor's notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

ARTICLE 6

HUMAN BODY TRAFFIC

Law reviews. — For note, "Beyond the 'Tiers' of Human Trafficking Victims: Islamic Law's Ability to Push the Muslim World to the Top of the United States Trafficking Tier Placements and into Compliance with International Law," see 39 Ga. J. Int'l & Comp. L. 391 (2011).

ARTICLE 7

SALE OR DISTRIBUTION TO, OR POSSESSION BY, MINORS OF CIGARETTES AND TOBACCO RELATED OBJECTS

16-12-170. Definitions.

As used in this article, the term:

(1) "Alternative nicotine product" means any noncombustible product containing nicotine that is intended for human consumption,

whether chewed, absorbed, dissolved, or ingested by any other means. The term "alternative nicotine product" shall not include any tobacco product, vapor product, or any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.

(2) "Cigar wraps" means individual cigar wrappers, known as wraps, blunt wraps, or roll your own cigar wraps, that consist in whole or in part of reconstituted tobacco leaf or flavored tobacco leaf.

(3) "Cigarette" means roll for smoking made wholly or in part of tobacco when the cover of the roll is paper or any substance other than tobacco.

(4) "Community service" means a public service which a minor might appropriately be required to perform, as determined by the court, as punishment for certain offenses provided for in this article.

(5) "Minor" means any person who is under the age of 18 years.

(6) "Person" means any natural person or any firm, partnership, company, corporation, or other entity.

(7) "Proper identification" means any document issued by a governmental agency containing a description of the person, such person's photograph, or both, and giving such person's date of birth and includes, without being limited to, a passport, military identification card, driver's license, or an identification card authorized under Code Sections 40-5-100 through 40-5-104. "Proper identification" shall not include a birth certificate.

(8) "Tobacco product" means any cigars, little cigars, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff or snuff powder; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such a manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. The term "tobacco product" shall not include any alternative nicotine product, vapor product, or product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.

(9) "Tobacco related objects" means any papers, wrappers, or other products, devices, or substances, including cigar wraps, which are used for the purpose of making cigarettes or tobacco products in any form whatsoever.

(10) "Vapor product" means any noncombustible product containing nicotine that employs a heating element, power source, electronic

circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form. The term "vapor product" shall include any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. The term "vapor product" shall not include any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act. (Code 1981, § 16-12-170, enacted by Ga. L. 1987, p. 945, § 1; Ga. L. 1989, p. 14, § 16; Ga. L. 1993, p. 343, § 1; Ga. L. 2013, p. 795, § 1/HB 256; Ga. L. 2014, p. 130, § 1/HB 251.)

The 2013 amendment, effective May 6, 2013, added paragraph (1); redesignated former paragraphs (1) through (6) as present paragraphs (2) through (7), respectively; and inserted ", including cigar wraps," near the middle of paragraph (7).

The 2014 amendment, effective July 1, 2014, added paragraph (1); redesignated former paragraphs (1) through (6) as present paragraphs (2) through (7), respectively; substituted the present provisions of paragraph (3) for the former provisions, which read: "'Cigarettes' means any type of tobacco or tobacco product."; added paragraph (8); redesignated former paragraph (7) as present paragraph (9); inserted "products" following "tobacco" near the end of paragraph (9); and added paragraph (10).

U.S. Code. — The Food, Drug, and Cosmetic Act, referred to in this Code section, is codified at 21 U.S.C. § 301.

16-12-171. Prohibited acts.

(a)(1) It shall be unlawful for any person knowingly to:

(A) Sell or barter, directly or indirectly, any cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products to a minor;

(B) Purchase any cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products for any minor unless the minor for whom the purchase is made is the child of the purchaser; or

(C) Advise, counsel, or compel any minor to smoke, inhale, chew, or use cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products.

(2)(A) The prohibition contained in paragraph (1) of this subsection shall not apply with respect to sale of cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products by a person when such person has been furnished with proper identification showing that the person to whom the

cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products are sold is 18 years of age or older.

(B) In any case where a reasonable or prudent person could reasonably be in doubt as to whether or not the person to whom cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products are to be sold or otherwise furnished is actually 18 years of age or older, it shall be the duty of the person selling or otherwise furnishing such cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products to request to see and to be furnished with proper identification as provided for in subsection (b) of this Code section in order to verify the age of such person. The failure to make such request and verification in any case where the person to whom the cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products are sold or otherwise furnished is less than 18 years of age may be considered by the trier of fact in determining whether the person selling or otherwise furnishing such cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products did so knowingly.

(3) Any person who violates this subsection shall be guilty of a misdemeanor.

(b)(1) It shall be unlawful for any minor to:

(A) Purchase, attempt to purchase, or possess for personal use any cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products. This subparagraph shall not apply to possession of cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products by a minor when a parent or guardian of such minor gives the cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products to the minor and possession is in the home of the parent or guardian and such parent or guardian is present; or

(B) Misrepresent such minor's identity or age or use any false identification for the purpose of purchasing or procuring any cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products.

(2) A minor who commits an offense provided for in paragraph (1) of this subsection may be punished as follows:

(A) By requiring the performance of community service not exceeding 20 hours;

(B) By requiring attendance at a publicly or privately sponsored lecture or discussion on the health hazards of smoking or tobacco use, provided such lecture or discussion is offered without charge to the minor; or

(C) By a combination of the punishments described in subparagraphs (A) and (B) of this paragraph. (Code 1981, § 16-12-171, enacted by Ga. L. 1987, p. 945, § 1; Ga. L. 1993, p. 343, § 2; Ga. L. 1996, p. 483, § 1; Ga. L. 1999, p. 81, § 16; Ga. L. 2004, p. 332, § 1; Ga. L. 2007, p. 497, § 1/SB 95; Ga. L. 2014, p. 130, § 2/HB 251.)

The 2014 amendment, effective July 1, 2014, in this Code section, substituted "cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products" for "cigarettes or tobacco related objects" throughout; and, in subparagraph (a)(2)(A), substituted "products, tobacco related objects, alternative nicotine products, or vapor products" for "products, or tobacco related objects" twice.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of state and local laws providing for civil liability for tobacco sales or distribution to minors, 66 ALR6th 315.

16-12-172. Posting signs in place of business.

(a) Any person owning or operating a place of business in which cigarettes, tobacco products, or tobacco related objects are sold or offered for sale shall post in a conspicuous place a sign which shall contain the following statement:

"SALE OF CIGARETTES, TOBACCO, TOBACCO PRODUCTS, TOBACCO RELATED OBJECTS, ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW."

Such sign shall be printed in letters of at least one-half inch in height.

(b) Any person who fails to comply with the requirements of subsection (a) of this Code section shall be guilty of a misdemeanor. (Code 1981, § 16-12-172, enacted by Ga. L. 1987, p. 945, § 1; Ga. L. 1993, p. 343, § 3; Ga. L. 2014, p. 130, § 3/HB 251.)

The 2014 amendment, effective July 1, 2014, substituted "PRODUCTS, TOBACCO RELATED OBJECTS, ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR PRODUCTS" for "PRODUCTS, OR TOBACCO RELATED OBJECTS" in the statement following subsection (a).

16-12-173. Sales from vending machines.

(a)(1) Any person who maintains in such person's place of business a vending machine which dispenses cigarettes, tobacco products, to-

bacco related objects, alternative nicotine products, or vapor products shall place or cause to be placed in a conspicuous place on such vending machine a sign containing the following statement:

"THE PURCHASE OF CIGARETTES, TOBACCO PRODUCTS, TOBACCO RELATED OBJECTS, ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR PRODUCTS FROM THIS VENDING MACHINE BY ANY PERSON UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW."

(2) Any person who maintains in such person's place of business a vending machine which dispenses cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products shall not dispense any other type of product, other than matches, in such vending machine.

(b) Any person who fails to comply with the requirements of subsection (a) of this Code section shall be guilty of a misdemeanor; provided, however, for a first offense, the sentence shall be a fine not to exceed $300.00.

(c) It shall be a violation of subsection (a) of Code Section 16-12-171 for any person knowingly to allow a minor to operate a vending machine which dispenses cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products.

(d) The offenses provided for by paragraph (1) of subsection (b) of Code Section 16-12-171 shall apply to the operation by a minor of a vending machine which dispenses cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products.

(e)(1) The sale or offering for sale of cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products from vending machines shall not be permitted except:

(A) In locations which are not readily accessible to minors, including but not limited to:

(i) Factories, businesses, offices, and other places which are not open to the general public;

(ii) Places open to the general public which do not admit minors; and

(iii) Places where alcoholic beverages are offered for sale;

(B) In areas which are in the immediate vicinity, plain view, and under the continuous supervision of the proprietor of the establishment or an employee who will observe the purchase of cigarettes, tobacco products, tobacco related objects, alternative nicotine products, and vapor products from the vending machine; and

(C) In rest areas adjacent to roads and highways of the state.

(2) Violation of this subsection shall be punished as provided in subsection (b) of this Code section for violation of subsection (a) of this Code section. (Code 1981, § 16-12-173, enacted by Ga. L. 1987, p. 945, § 1; Ga. L. 1993, p. 343, § 4; Ga. L. 2007, p. 497, § 2/SB 95; Ga. L. 2014, p. 130, § 4/HB 251.)

The 2014 amendment, effective July 1, 2014, substituted "products, tobacco related objects, alternative nicotine products, or vapor products" for "products, or tobacco related objects" in paragraphs (a)(1) and (a)(2), substituted "PRODUCTS, TOBACCO RELATED OBJECTS, ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR PRODUCTS" for "PRODUCTS, OR TOBACCO RELATED OBJECTS" in the statement following paragraph (a)(1); substituted "any other type of product" for "any nontobacco product" in paragraph (a)(2); substituted "cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products" for "cigarettes or tobacco related objects" in subsections (c) and (d) and in the introductory language of paragraph (e)(1); and substituted "products, tobacco related objects, alternative nicotine products, and vapor products" for "product and tobacco related objects" in subparagraph (e)(1)(B).

16-12-174. Distribution of tobacco product samples.

(a) As used in this Code section, the term "tobacco product sample" means a cigarette, tobacco product, alternative nicotine product, or vapor product distributed to members of the general public at no cost for purposes of promoting the product.

(b) It shall be unlawful for any person to distribute any tobacco product sample to any person under the age of 18 years.

(c) A person distributing tobacco product samples shall require proof of age from a prospective recipient if an ordinary person would conclude on the basis of appearance that such prospective recipient may be under the age of 18 years.

(d) It shall be unlawful for any person who has not attained the age of 18 years to receive or attempt to receive any tobacco product sample.

(e) No person shall distribute tobacco product samples on any public street, sidewalk, or park within 500 feet of any school or playground when those facilities are being used primarily by persons under the age of 18 years.

(f) Violation of this Code section shall be punished as a misdemeanor. (Code 1981, § 16-12-174, enacted by Ga. L. 1993, p. 343, § 5; Ga. L. 2014, p. 130, § 5/HB 251.)

The 2014 amendment, effective July 1, 2014, in subsection (a), inserted "cigarette," and inserted ", alternative nicotine product, or vapor product".

16-12-175. Enforcement actions; collection and report of fines; inspections by law enforcement agencies; annual report.

(a) The provisions of this article, inclusive, shall be enforced through actions brought in any court of competent jurisdiction by the prosecuting attorney for the county in which the alleged violation occurred as well as through administrative citations issued by special agents or enforcement officers of the state revenue commissioner. Any fine collected for a violation of said provision shall be paid to the clerk of the court of the jurisdiction in which the violation occurred. Upon receipt of a fine for any violation of said provision, the clerk shall promptly notify the state revenue commissioner of the violation.

(b) The state revenue commissioner, acting through special agents or enforcement officers, shall annually conduct random, unannounced inspections at locations where cigarettes, tobacco products, alternative nicotine products, or vapor products are sold or distributed to ensure compliance with this article. Persons under the age of 18 years may be enlisted to test compliance with this article; provided, however, that such persons may be used to test compliance with this article only if the testing is conducted under the direct supervision of such special agents or enforcement officers and written parental consent has been provided. Any other use of persons under the age of 18 years to test compliance with this article or any other prohibition of like or similar import shall be unlawful and the person or persons responsible for such use shall be subject to the penalties prescribed in this article. The state revenue commissioner shall prepare annually for submission by the Governor to the secretary of the United States Department of Health and Human Services the report required by section 1926 of subpart I of part B of Title XIX of the federal Public Health Service Act, 42 U.S.C. 300x-26. (Code 1981, § 16-12-175, enacted by Ga. L. 1993, p. 343, § 5; Ga. L. 2000, p. 1343, § 1; Ga. L. 2011, p. 752, § 16/HB 142; Ga. L. 2014, p. 130, § 6/HB 251.)

The 2014 amendment, effective July 1, 2014, in subsection (b), inserted "cigarettes," and inserted ", alternative nicotine products, or vapor products" in the first sentence.

16-12-176. Administration and enforcement.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of state and local laws providing for civil liability for tobacco sales or distribution to minors, 66 ALR6th 315.

CHAPTER 13

CONTROLLED SUBSTANCES

Article 1

General Provisions

Article 2

Regulation of Controlled Substances

Part 1

Schedules, Offenses, and Penalties

Part 2

Electronic Data Base of Prescription Information

Article 3

Dangerous Drugs

ARTICLE 1

GENERAL PROVISIONS

16-13-2. Conditional discharge for possession of controlled substances as first offense and certain nonviolent property crimes; dismissal of charges; restitution to victims.

JUDICIAL DECISIONS

Proof of weight. — To discharge the burden of proving that the weight of the marijuana exceeded one ounce, it is not necessary for the state to come forward with evidence of how many grams equal an ounce, even if the state's witnesses testify about the weight of the marijuana in terms of grams; when O.C.G.A. § 16-13-2(b) refers to an "ounce" of marijuana, the statute refers, as a matter of law, to an avoirdupois ounce, which is the equivalent of, when rounded up to the nearest hundredth of a gram, 28.35 grams, and the number of grams in an ounce is not something that varies from case to case or is open to reasonable dispute. Gaudlock v. State, 310 Ga. App. 149, 713 S.E.2d 399 (2011).

Evidence sufficient to show possession.

Evidence was sufficient to sustain defendant's conviction for possession of more

than one ounce of marijuana in violation of O.C.G.A. §§ 16-13-2(b) and 16-13-30(j) because the state adduced evidence at trial that the defendant had possession of 28.8 grams of marijuana, which was, by definition, more than one ounce of marijuana. Gaudlock v. State, 310 Ga. App. 149, 713 S.E.2d 399 (2011).

Evidence was sufficient to authorize the defendant's conviction for possession of marijuana in violation of O.C.G.A. § 16-13-2(b) because the defendant was the owner and occasional driver of the vehicle and, thus, was presumed to have exclusive possession and control of the marijuana found therein; the defendant had knowledge that there was marijuana inside the vehicle and knew the exact location in the vehicle where the marijuana was located. Parker v. State, 317 Ga. App. 93, 730 S.E.2d 717 (2012).

Defendant's conviction for drug possession was upheld on appeal because there was sufficient evidence to support defendant's conviction based on defendant admitting to owning the safe where approximately 80 grams of marijuana were located. Franklin v. State, 325 Ga. App. 728, 754 S.E.2d 774 (2014).

Evidence was sufficient to convict the defendant of trafficking in methamphetamine, possession of oxycodone and less than one ounce of marijuana, and driving while the defendant's license was suspended because the defendant knew the defendant's license to drive was suspended, and because the defendant knowingly had both the power and intention to exercise dominion or control over the controlled substances found in the backpack and was in constructive possession of those substances as the defendant was driving the car in which the backpack was located, and the defendant was linked to the backpack by the defendant's control of the car and evidence that the backpack contained a copy of a fake driver's license the defendant gave to an officer. Armstrong v. State, 325 Ga. App. 690, 754 S.E.2d 652 (2014).

Cited in Castaneira v. State, 321 Ga. App. 418, 740 S.E.2d 400 (2013); Smith v. State, 322 Ga. App. 549, 745 S.E.2d 771 (2013).

16-13-5. Immunity from arrest or prosecution for persons seeking medical assistance for drug overdose.

(a) As used in this Code section, the term:

(1) "Drug overdose" means an acute condition, including, but not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma, mania, or death, resulting from the consumption or use of a controlled substance or dangerous drug by the distressed individual in violation of this chapter or that a reasonable person would believe to be resulting from the consumption or use of a controlled substance or dangerous drug by the distressed individual.

(2) "Drug violation" means:

(A) A violation of subsection (a) of Code Section 16-13-30 for possession of a controlled substance if the aggregate weight, including any mixture, is less than four grams of a solid substance, less than one milliliter of liquid substance, or if the substance is placed onto a secondary medium with a combined weight of less than four grams;

(B) A violation of paragraph (1) of subsection (j) of Code Section 16-13-30 for possession of less than one ounce of marijuana; or

(C) A violation of Code Section 16-13-32.2, relating to possession and use of drug related objects.

(3) "Medical assistance" means aid provided to a person by a health care professional licensed, registered, or certified under the laws of this state who, acting within his or her lawful scope of practice, may provide diagnosis, treatment, or emergency medical services.

(4) "Seeks medical assistance" means accesses or assists in accessing the 9-1-1 system or otherwise contacts or assists in contacting law enforcement or a poison control center and provides care to a person while awaiting the arrival of medical assistance to aid such person.

(b) Any person who in good faith seeks medical assistance for a person experiencing or believed to be experiencing a drug overdose shall not be arrested, charged, or prosecuted for a drug violation if the evidence for the arrest, charge, or prosecution of such drug violation resulted solely from seeking such medical assistance. Any person who is experiencing a drug overdose and, in good faith, seeks medical assistance for himself or herself or is the subject of such a request shall not be arrested, charged, or prosecuted for a drug violation if the evidence for the arrest, charge, or prosecution of such drug violation resulted solely from seeking such medical assistance. Any such person shall also not be subject to, if related to the seeking of such medical assistance:

(1) Penalties for a violation of a permanent or temporary protective order or restraining order; or

(2) Sanctions for a violation of a condition of pretrial release, condition of probation, or condition of parole based on a drug violation.

(c) Nothing in this Code section shall be construed to limit the admissibility of any evidence in connection with the investigation or prosecution of a crime with regard to a defendant who does not qualify for the protections of subsection (b) of this Code section or with regard to other crimes committed by a person who otherwise qualifies for protection pursuant to subsection (b) of this Code section. Nothing in this Code section shall be construed to limit any seizure of evidence or contraband otherwise permitted by law. Nothing in this Code section shall be construed to limit or abridge the authority of a law enforcement officer to detain or take into custody a person in the course of an investigation or to effectuate an arrest for any offense except as provided in subsection (b) of this Code section. (Code 1981, § 16-13-5, enacted by Ga. L. 2014, p. 683, § 1-3/HB 965.)

Effective date. — This Code section became effective April 24, 2014.

Editor's notes. — Ga. L. 2014, p. 683, § 1-1/HB 965, not codified by the General

Assembly, provides that: "This part [Part I of the Act] shall be known and may be cited as the 'Georgia 9-1-1 Medical Amnesty Law'."

Ga. L. 2014, p. 683, § 1-2/HB 965, not codified by the General Assembly, provides:

"WHEREAS, according to the Atlanta Journal Constitution ('AJC'), more than 600,000 Americans used heroin in 2012, which is nearly double the number from five years earlier according to health officials; and

"WHEREAS, the AJC article states that '[t]he striking thing about heroin's most recent incarnation is that a drug that was once largely confined to major cities is spreading into suburban and rural towns across America, where it is used predominantly by young adults between the ages of 18 and 29'; and

"WHEREAS, the Drug Enforcement Agency has noted that the 'skyrocketing' increase in the availability of cheap heroin is a direct reaction by cartels to legislative efforts to regulate and restrict access to opiate prescription painkillers; and

"WHEREAS, Stephen Cardiges of Lawrenceville died of an accidental heroin overdose; and

"WHEREAS, Randall Brannen of McDonough died of an accidental overdose; and

"WHEREAS, Stephen and Randall are a part of a growing trend of drug overdose victims in Georgia; and

"WHEREAS, those who were with them did not call 9-1-1 to seek medical assistance, which could have saved their lives, because of a fear of prosecution for the possession and use of illegal drugs; and

"WHEREAS, Overdose Reporting/Medical Amnesty legislation, or '9-1-1 Good Samaritan Laws,' have been passed in 14 states, including Florida and North Carolina, and is under consideration in several more; and

"WHEREAS, in North Carolina, it is believed that at least 20 lives have been saved since passage last year of similar legislation, and in Massachusetts it is believed that more than 120 lives have been saved since passage of similar legislation in that state in 2012; and

"WHEREAS, overdose deaths result from a variety of substances, including prescription painkillers, heroin, methamphetamine, designer drugs, and alcohol."

Ga. L. 2014, p. 683, § 3-1(b)/HB 965, not codified by the General Assembly, provides, in part, that: "Parts I and II of this Act shall apply to all acts committed on or after such effective date [April 24, 2014]."

ARTICLE 2

REGULATION OF CONTROLLED SUBSTANCES

Part 1

Schedules, Offenses, and Penalties

16-13-21. Definitions.

As used in this article, the term:

(0.5) "Addiction" means a primary, chronic, neurobiologic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include the following: impaired control drug use, craving, compulsive use, and continued use despite harm. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and are not the same as addiction.

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or by any other means, to the body of a patient or research subject by:

(A) A practitioner or, in his or her presence, by his or her authorized agent; or

(B) The patient or research subject at the direction and in the presence of the practitioner.

(1.1) "Agency" means the Georgia Drugs and Narcotics Agency established pursuant to Code Section 26-4-29.

(2) "Agent" of a manufacturer, distributor, or dispenser means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(2.1) "Board" means the State Board of Pharmacy or its designee, so long as such designee is another state entity.

(3) "Bureau" means the Georgia Bureau of Investigation.

(4) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through V of Code Sections 16-13-25 through 16-13-29 and Schedules I through V of 21 C.F.R. Part 1308.

(5) "Conveyance" means any object, including aircraft, vehicle, or vessel, but not including a person, which may be used to carry or transport a substance or object.

(6) "Counterfeit substance" means:

(A) A controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the controlled substance;

(B) A controlled substance or noncontrolled substance, which is held out to be a controlled substance or marijuana, whether in a container or not which does not bear a label which accurately or truthfully identifies the substance contained therein; or

(C) Any substance, whether in a container or not, which bears a label falsely identifying the contents as a controlled substance.

(6.1) "Dangerous drug" means any drug, other than a controlled substance, which cannot be dispensed except upon the issuance of a prescription drug order by a practitioner authorized under this chapter.

(6.2) "DEA" means the United States Drug Enforcement Administration.

(7) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(8) "Dependent," "dependency," "physical dependency," "psychological dependency," or "psychic dependency" means and includes the state of adaptation that is manifested by drug class specific signs and symptoms that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, and administration of an antagonist. Physical dependence, by itself, does not equate with addiction.

(9) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery, or the delivery of a controlled substance by a practitioner, acting in the normal course of his or her professional practice and in accordance with this article, or to a relative or representative of the person for whom the controlled substance is prescribed.

(10) "Dispenser" means a person licensed under the laws of this state, or any other state or territory of the United States to dispense or deliver a Schedule II, III, IV, or V controlled substance to the ultimate user in this state but shall not include:

(A) A pharmacy licensed as a hospital pharmacy by the Georgia State Board of Pharmacy pursuant to Code Section 26-4-110;

(B) An institutional pharmacy that serves only a health care facility, including, but not limited to, a nursing home, an intermediate care home, a personal care home, or a hospice program, which provides patient care and which pharmacy dispenses such substances to be administered and used by a patient on the premises of the facility;

(C) A practitioner or other authorized person who administers such a substance; or

(D) A pharmacy operated by, on behalf of, or under contract with the Department of Corrections for the sole and exclusive purpose of providing services in a secure environment to prisoners within a penal institution, penitentiary, prison, detention center, or other secure correctional institution. This shall include correctional institutions operated by private entities in this state which house inmates under the Department of Corrections.

(11) "Distribute" means to deliver a controlled substance, other than by administering or dispensing it.

(12) "Distributor" means a person who distributes.

(12.05) "FDA" means the United States Food and Drug Administration.

(12.1) "Imitation controlled substance" means:

(A) A product specifically designed or manufactured to resemble the physical appearance of a controlled substance such that a reasonable person of ordinary knowledge would not be able to distinguish the imitation from the controlled substance by outward appearances; or

(B) A product, not a controlled substance, which, by representations made and by dosage unit appearance, including color, shape, size, or markings, would lead a reasonable person to believe that, if ingested, the product would have a stimulant or depressant effect similar to or the same as that of one or more of the controlled substances included in Schedules I through V of Code Sections 16-13-25 through 16-13-29.

(13) "Immediate precursor" means a substance which the State Board of Pharmacy has found to be and by rule identifies as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used, in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(14) "Isomers" means stereoisomers (optical isomers), geometrical isomers, and structural isomers (chain and positional isomers) but shall not include functional isomers.

(15) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance:

(A) By a practitioner as an incident to his or her administering or dispensing of a controlled substance in the course of his or her professional practice; or

(B) By a practitioner or by his or her authorized agent under his or her supervision for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(16) "Marijuana" means all parts of the plant of the genus Cannabis, whether growing or not, the seeds thereof, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin; but shall not include samples as described in subparagraph (P) of paragraph (3) of Code Section 16-13-25 and shall not include the completely defoliated mature stalks of such plant, fiber produced from such stalks, oil, or cake, or the completely sterilized samples of seeds of the plant which are incapable of germination.

(17) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(B) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical to any of the substances referred to in subparagraph (A) of this paragraph, but not including the isoquinoline alkaloids of opium;

(C) Opium poppy and poppy straw; or

(D) Coca leaves and any salt, compound, derivative, stereoisomers of cocaine, or preparation of coca leaves, and any salt, compound, stereoisomers of cocaine, derivative, or preparation thereof which is chemically equivalent or identical to any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(17.1) "Noncontrolled substance" means any drug or other substance other than a controlled substance as defined by paragraph (4) of this Code section.

(18) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under Code Section 16-13-22, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(19) "Opium poppy" means the plant of the species Papaver somniferum L., except its seeds.

(19.1) "Patient" means the person who is the intended consumer of a drug for whom a prescription is issued or for whom a drug is dispensed.

(20) "Person" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, or association, or any other legal entity.

(21) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

(22) "Potential for abuse" means and includes a substantial potential for a substance to be used by an individual to the extent of creating hazards to the health of the user or the safety of the public, or the substantial potential of a substance to cause an individual using that substance to become dependent upon that substance.

(23) "Practitioner" means:

(A) A physician, dentist, pharmacist, podiatrist, scientific investigator, or other person licensed, registered, or otherwise authorized under the laws of this state to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state;

(B) A pharmacy, hospital, or other institution licensed, registered, or otherwise authorized by law to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state;

(C) An advanced practice registered nurse acting pursuant to the authority of Code Section 43-34-25. For purposes of this chapter and Code Section 43-34-25, an advanced practice registered nurse is authorized to register with the federal Drug Enforcement Administration and appropriate state authorities; or

(D) A physician assistant acting pursuant to the authority of subsection (e.1) of Code Section 43-34-103. For purposes of this chapter and subsection (e.1) of Code Section 43-34-103, a physician assistant is authorized to register with the federal Drug Enforcement Administration and appropriate state authorities.

(23.1) "Prescriber" means a physician, dentist, scientific investigator, or other person licensed, registered, or otherwise authorized under the laws of this state, or any other state or territory of the United States, to prescribe a controlled substance in the course of professional practice or research in this state.

(24) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(25) "Registered" or "register" means registration as required by this article.

(26) "Registrant" means a person who is registered under this article.

(26.1) "Schedule II, III, IV, or V controlled substance" means a controlled substance that is classified as a Schedule II, III, IV, or V controlled substance under Code Section 16-13-26, 16-13-27, 16-13-28, or 16-13-29, respectively, or under the Federal Controlled Substances Act, 21 U.S.C. Section 812.

(27) "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, or any area subject to the legal authority of the United States.

(27.1) "Tolerance" means a physiologic state resulting from regular use of a drug in which an increased dosage is needed to produce a specific effect or a reduced effect is observed with a constant dose over time. Tolerance may or may not be evident during opioid treatment and does not equate with addiction.

(28) "Ultimate user" means a person who lawfully possesses a controlled substance for his or her own use, for the use of a member of his or her household, or for administering to an animal owned by him or her or by a member of his or her household or an agent or representative of the person. (Code 1933, § 79A-802, enacted by Ga. L. 1967, p. 296, § 1; Ga. L. 1974, p. 221, § 1; Ga. L. 1978, p. 2237, § 1; Ga. L. 1979, p. 859, § 4; Ga. L. 1980, p. 1746, § 3; Ga. L. 1982, p. 3, § 16; Ga. L. 1982, p. 1264, §§ 1, 3; Ga. L. 1982, p. 2370, §§ 1, 2; Ga. L. 1982, p. 2403, §§ 10, 15; Ga. L. 1984, p. 22, § 16; Ga. L. 1985, p. 149, § 16; Ga. L. 1986, p. 10, § 16; Ga. L. 1986, p. 1555, §§ 1, 2; Ga. L. 1988, p. 1065, § 1; Ga. L. 1999, p. 643, § 5.1; Ga. L. 2003, p. 349, § 1; Ga. L. 2006, p. 125, § 2/SB 480; Ga. L. 2009, p. 859, § 4/HB 509; Ga. L. 2011, p. 659, § 1/SB 36; Ga. L. 2014, p. 353, § 1/SB 134; Ga. L. 2014, p. 866, § 16/SB 340.)

The 2014 amendments. — The first 2014 amendment, effective July 1, 2014, in the introductory language of paragraph (10), substituted "licensed under the laws of this state, or any other state or territory of the United States to dispense or deliver" for "that delivers" and inserted "in this state"; inserted "State" in subparagraph (10)(A); and inserted ", or any other state or territory of the United States," in paragraph (23.1). The second 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, arranged the paragraphs in this Code section in alphabetical order.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 269 (2011). For article, "Crimes and Offenses: Controlled Substances," see 28 Ga. St. U.L. Rev. 269 (2011).

JUDICIAL DECISIONS

Analysis

General Consideration

General Consideration

Evidence sufficient for attempt to traffic methamphetamine. — Sufficient evidence existed to support the defendant's conviction for attempted trafficking by manufacturing methamphetamine based on the evidence that the defendant lived at the residence wherein the meth lab was discovered as shown by the owner's testimony and another witness who testified that the defendant slept at the home nightly and material used in the red phosphorous process for manufacturing methamphetamine was seized from the residence. Franks v. State, 745 S.E.2d 666, No. A13A0932, 2013 Ga. App. LEXIS 533 (2013).

16-13-22. Administration of article; standards and schedules.

JUDICIAL DECISIONS

State failed to prove drug regulated by law. — Defendant was improperly convicted of violating the Georgia's Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., by distributing a Schedule IV drug, Zolpidem, which was commonly known as Ambien, O.C.G.A. §§ 16-13-28(a)(33) and 16-13-30(b), because the state failed to prove that the drug Ambien was regulated by law, and the trade name of a statutorily designated controlled substance was not the proper subject of judicial notice; while the state presented evidence that the defendant admitted to distributing Ambien and produced testimony that "Ambien" was a Schedule IV controlled substance, the state was required to identify "Ambien" as a trade name for Zolpidem through admissible evidence. DeLong v. State, 310 Ga. App. 518, 714 S.E.2d 98 (2011).

16-13-23. Nomenclature for controlled substances.

JUDICIAL DECISIONS

State failed to prove drug regulated by law. — Defendant was improperly convicted of violating the Georgia's Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., by distributing a Schedule IV drug, Zolpidem, which was commonly known as Ambien, O.C.G.A. §§ 16-13-28(a)(33) and 16-13-30(b), because the state failed to prove that the drug Ambien was regulated by law, and the trade name of a statutorily designated controlled substance was not the proper subject of judicial notice; while the state presented evidence that the defendant admitted to distributing Ambien and produced testimony that "Ambien" was a Schedule IV controlled substance, the state was required to identify "Ambien" as a trade name for Zolpidem through admissible evidence. DeLong v. State, 310 Ga. App. 518, 714 S.E.2d 98 (2011).

16-13-25. Schedule I.

The controlled substances listed in this Code section are included in Schedule I:

(1) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, pursuant to this article, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(A) Acetylmethadol;

(B) Allylprodine;

(C) Reserved;

(D) Alphameprodine;

(E) Alphamethadol;

(F) Benzethidine;

(G) Betacetylmethadol;

(H) Betameprodine;

(I) Betamethadol;

(J) Betaprodine;

(K) Clonitazene;

(L) Dextromoramide;

(M) Dextromorphan;

(N) Diampromide;

(O) Diethylthiambutene;

(P) Dimenoxadol;

(Q) Dimetheptanol;

(R) Dimethylthiambutene;

(S) Dioxaphetyl butyrate;

(T) Dipipanone;

(U) Ethylmethylthiambutene;

(V) Etonitazene;

(W) Etoxeridene;

(X) Furethidine;

(Y) Hydroxypethidine;

(Z) Ketobemidone;

(AA) Levomoramide;

(BB) Levophenacylmorphan;

(CC) Morpheridine;

(DD) Noracymethadol;

(EE) Norlevorphanol;

(FF) Normethadone;

(GG) Norpipanone;

(HH) Phenadoxone;

(II) Phenampromide;

(JJ) Phenomorphan;

(KK) Phenoperidine;

(LL) Piritramide;

(MM) Proheptazine;

(NN) Properidine;

(OO) Propiram;

(PP) Racemoramide;

(QQ) Trimeperidine;

(2) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Acetorphine;

(B) Acetyldihydrocodeine;

(C) Benzylmorphine;

(D) Codeine methylbromide;

(E) Codeine-N-Oxide;

(F) Cyprenorphine;

(G) Desomorphine;

(H) Dihydromorphine;

(I) Etorphine;

(J) Heroin;

(K) Hydromorphinol;

(L) Methyldesorphine;

(M) Methyldihydromorphine;

(N) Morphine methylbromide;

(O) Morphine methylsulfonate;

(P) Morphine-N-Oxide;

(Q) Myrophine;

(R) Nicocodeine;

(S) Nicomorphine;

(T) Normorphine;

(U) Pholcodine;

(V) Thebacon;

(3) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers (whether optical, position, or geometrics), and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) 3, 4-methylenedioxyamphetamine;

(B) 5-methoxy-3, 4-methylenedioxyamphetamine;

(C) 3, 4, 5-trimethoxyamphetamine;

(D) Bufotenine;

(E) Diethyltryptamine;

(F) Dimethyltryptamine;

(G) 4-methyl-2, 5-dimethoxyamphetamine;

(H) Ibogaine;

(I) Lysergic acid diethylamide;

(J) Mescaline;

(K) Peyote;

(L) N-ethyl-3-piperidyl benzilate;

(M) N-methyl-3-piperidyl benzilate;

(N) Psilocybin;

(O) Psilocyn (Psilocin);

(P) Tetrahydrocannabinols which shall include, but are not limited to:

(i) All synthetic or naturally produced samples containing more than 15 percent by weight of tetrahydrocannabinols; and

(ii) All synthetic or naturally produced tetrahydrocannabinol samples which do not contain plant material exhibiting the external morphological features of the plant cannabis;

(Q) 2, 5-dimethoxyamphetamine;

(R) 4-bromo-2, 5-dimethoxyamphetamine;

(S) 4-methoxyamphetamine;

(T) Cyanoethylamphetamine;

(U) (1-phenylcyclohexyl) ethylamine;

(V) 1-(1-phenylcyclohexyl) pyrrolidine;

(W) Phencyclidine;

(X) 1-piperidinocyclohexanecarbonitrile;

(Y) 1-phenyl-2-propanone (phenylacetone);

(Z) 3, 4-Methylenedioxymethamphetamine (MDMA);

(AA) 1-methyl-4-phenyl-4-propionoxypiperidine;

(BB) 1-(2-phenylethyl)-4-phenyl-4-acetyloxypiperidine;

(CC) 3-methylfentanyl;

(DD) N-ethyl-3, 4-methylenedioxyamphetamine;

(EE) Para-flurofentanyl;

(FF) 2,5-Dimethoxy-4-Ethylamphetamine;

(GG) Cathinone;

(HH) Reserved;

(II) PEPAP (1-(2-phenethyl)-4 phenyl-4-acetoxypiperide);

(JJ) Alpha-Methylthiofentanyl;

(KK) Acetyl-Alpha-Methylfentanyl;

(LL) 3-Methylthiofentanyl;

(MM) Beta-Hydroxyfentanyl;

(NN) Thiofentanyl;

(OO) 3,4-Methylenedioxy-N-Ethylamphetamine;

(PP) 4-Methylaminorex;

(QQ) N-Hydroxy-3,4-Methylenedioxyamphetamine;

(RR) Beta-Hydroxy-3-Methylfentanyl;

(SS) Chlorophenylpiperazine (CPP);

(TT) N, N-Dimethylamphetamine;

(UU) 1-(1-(2-thienyl)cyclohexy)pyrrolidine;

(VV) 4-Bromo-2,5-Dimethoxyphenethylamine (DMPE);

(WW) Alpha-Ethyltryptamine;

(XX) Methcathinone;

(YY) Aminorex;

(ZZ) 4-iodo-2,5-dimethoxyamphetamine;

(AAA) 4-chloro-2,5-dimethoxyamphetamine;

(BBB) 3,4-Methylenedioxypyrovalerone (MDPV);

(CCC) 4-Methylmethcathinone (Mephedrone);

(DDD) 3,4-Methylenedioxymethcathinone (Methylone);

(EEE) 4-Methoxymethcathinone;

(FFF) 4-Fluoromethcathinone;

(GGG) Fluorophenylpiperazine (FPP);

(HHH) 4-iodo-2,5-dimethoxyphenethylamine (2C-I);

(III) 4-chloro-2,5-dimethoxyphenethylamine (2C-C);

(JJJ) 4-iodo-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine (25I-NBOMe);

(KKK) 4-chloro-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine (25C-NBOMe);

(LLL) 4-bromo-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine (25B-NBOMe);

(MMM) N,N-Diallyl-5-Methoxytryptamine (5-MeO-DALT);

(NNN) 2-(2,5-dimethoxy-4-ethylphenyl)ethanamine (2C-E);

(OOO) 2-(2,5-Dimethoxy-4-nitrophenyl)-N-(2-methoxybenzyl) ethanamine (25N-NBOMe);

(PPP) 4-acetoxy-N-ethyl-N-methyltryptamine (4-AcO-MET);

(QQQ) 4-nitro-2,5-dimethoxyphenethylamine (2C-N);

(RRR) 5-methoxy-N,N-methylisopropyltryptamine (5-MeO-MIPT);

(SSS) Methoxetamine;

(TTT) N-acetyl-3,4-methylenedioxymethcathinone;

(4) Any material, compound, mixture, or preparation which contains any of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Fenethylline;

(B) N-(1-benzyl-4-piperidyl)-N-phenylpropanamide (benzyl-fentanyl);

(C) N-(1-(2-thienyl)methyl-4-piperidyl)-N-phenylpropanamide (thenylfentanyl);

(D) Para-methoxyphenylpiperazine (MeOPP);

(5) Any material, compound, mixture, or preparation which contains any quantity of the following substances, their salts, isomers (whether optical, position, or geometrics), and salts of isomers, unless specifically excepted, whenever the existence of these substances, their salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Gamma hydroxybutyric acid (gamma hydroxy butyrate); provided, however, that this does not include any amount naturally and normally occurring in the human body; and

(B) Sodium oxybate, when the FDA approved form of this drug is not:

(i) In a container labeled in compliance with subsection (a) or (b) of Code Section 26-3-8; and

(ii) In the possession of:

(I) A registrant permitted to dispense the drug;

(II) Any person other than to whom the drug was prescribed; or

(III) Any person who attempts to or does unlawfully possess, sell, distribute, or give this drug to any other person;

(6) Notwithstanding the fact that Schedule I substances have no currently accepted medical use, the General Assembly recognizes certain of these substances which are currently accepted for certain

limited medical uses in treatment in the United States but have a high potential for abuse. Accordingly, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of methaqualone, including its salts, isomers, optical isomers, salts of their isomers, and salts of these optical isomers, is included in Schedule I;

(7) 2,5-Dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7);

(8) 1-(3-Trifluoromethylphenyl) Piperazine (TFMPP);

(9) N-Benzylpiperazine (BZP);

(10) 5-Methoxy-N,N-Diisopropyltryptamine (5-MeO-DIPT);

(11) Alpha-Methyltryptamine (AMT);

(12) Any of the following compounds, derivatives, their salts, isomers, or salts of isomers, halogen analogues, or homologues, unless specifically utilized as part of the manufacturing process by a commercial industry of a substance or material not intended for human ingestion or consumption, as a prescription administered under medical supervision, or research at a recognized institution, whenever the existence of these salts, isomers, or salts of isomers, halogen analogues, or homologues is possible within the specific chemical designation:

(A) Naphthoylindoles;

(B) Naphthylmethylindoles;

(C) Naphthoylpyrroles;

(D) Naphthylideneindenes;

(E) Phenylacetylindoles;

(F) Cyclohexylphenols;

(G) Benzoylindoles;

(H) Tricyclic benzopyrans;

(I) Adamantoylindoles;

(J) Indazole amides;

(K) [2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo [1,2,3-de]- 1,4-benzoxazin -6-yl]-1-naphthalenylmethanone (WIN 55,212-2);

(L) Any compound, unless specifically excepted or listed in this or another schedule, structurally derived from 2-aminopropan-1-one by substitution at the 1-position with either

phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in any of the following ways:

(i) By substitution in the ring system to any extent with alkyl, alkylenedioxy, alkoxy, haloalkyl, hydroxyl, or halide substitutions, whether or not further substituted in the ring system;

(ii) By substitution at the 3-position with an acyclic alkyl substitution; or

(iii) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, or methoxybenzyl groups, or by inclusion of the 2-amino nitrogen atom in a cyclic structure;

(L.1) 1-pentyl-8-quinolinyl ester-1H-indole-3-carboxylic acid (PB-22);

(M) (1-Pentylindol-3-yl)-(2,2,3,3-tetramethylcyclopropyl) methanone (UR-144);

(N) [1-(5-fluoropentyl)indole-3yl]-(2,2,3,3-tetramethylcyclopropyl) methanone (XLR11);

(O) [1,1′-biphenyl]-3-yl-carbamic acid, cyclohexyl ester (URB602);

(P) [1-(2-morpholin-4-ylethyl)-1H-indol-3-yl]-(2,2,3,3-tetramethylc yclopropyl) methanone (A-796,260);

(Q) [3-(3-carbamoylphenyl)phenyl] N-cyclohexylcarbamate (URB597);

(R) 6-methyl-2-[(4-methylphenyl)amino]-1-benzoxazin-4-one (URB754);

(S) 1-pentyl-3-(1-adamantylamido)indole (2NE1);

(T) 1-(5-fluoropentyl)-N-(tricyclo[3.31.13,7]dec-1-yl)-1H-indole-3-carboxamide (STS-135);

(U) 1-naphthalenyl[4-(pentylox)-1-naphthalenyl]-methanone (CB-13);

(V) N-1-naphthalenyl-1-pentyl-1H-indole-3-carboxamide (NNEI);

(W) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indole-3-c arboxamide (ADBICA);

(X) (1-(5-fluoropentyl)-1H-benzo[d]imidazol-2-yl) (naphthalen-1-yl)methanone (AM-2201 benzimidazole analog);

(Y) Quinolin-8-yl-1-(4-fluorobenzyl)-1H-indole-3-carboxylate (FUB-PB-22);

(Z) Naphthalen-1-yl-1-(4-fluorobenzyl)-1H-indole-3-carboxylate (FDU-PB-22). (Code 1933, § 79A-806, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1978, p. 1668, § 6; Ga. L. 1979, p. 859, § 5; Ga. L. 1980, p. 1746, § 4; Ga. L. 1981, p. 557, § 3; Ga. L. 1982, p. 2403, §§ 11, 16; Ga. L. 1984, p. 22, § 16; Ga. L. 1984, p. 1019, § 1; Ga. L. 1985, p. 1219, § 2; Ga. L. 1986, p. 1555, § 3; Ga. L. 1987, p. 261, § 1; Ga. L. 1989, p. 233, § 1; Ga. L. 1990, p. 8, § 16; Ga. L. 1990, p. 640, § 1; Ga. L. 1992, p. 1131, § 1; Ga. L. 1994, p. 169, §§ 1-3, 3.1; Ga. L. 1996, p. 356, § 1; Ga. L. 2001, p. 816, § 1; Ga. L. 2002, p. 415, § 16; Ga. L. 2003, p. 349, § 2; Ga. L. 2005, p. 1028, § 1/SB 89; Ga. L. 2006, p. 219, § 14/HB 1054; Ga. L. 2008, p. 169, §§ 1, 2/HB 1090; Ga. L. 2010, p. 338, § 1/HB 1309; Ga. L. 2010, p. 860, § 1/SB 353; Ga. L. 2011, p. 656, §§ 1, 2/SB 93; Ga. L. 2012, p. 40, §§ 2, 3/SB 370; Ga. L. 2013, p. 5, § 1/HB 57; Ga. L. 2013, p. 71, §§ 1, 1.1/HB 302; Ga. L. 2013, p. 141, § 16/HB 79; Ga. L. 2014, p. 217, §§ 1-3/HB 835.)

The 2012 amendment, effective March 27, 2012, added subparagraph (3)(GGG); and rewrote paragraph (12).

The 2013 amendments. — The first 2013 amendment, effective February 26, 2013, in paragraph (12), in the introductory paragraph, twice substituted "or" for "and" preceding "salts", inserted "halogen analogues, or homologues," near the beginning, and inserted ", halogen analogues, or homologues" near the end; deleted "or" at the end of subparagraph (12)(K); added a semicolon at the end of division (12)(L)(iii); and added subparagraphs (12)(M) through (12)(U). The second 2013 amendment, effective April 18, 2013, in subparagraph (3)(HH), substituted "Reserved" for "MPPP (1-Methyl-4-Phenyl-4-Propionoxypiperidine)" and added subparagraphs (3)(HHH) through (3)(MMM) and (12)(L.1). The third 2013 amendment effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised punctuation in subparagraph (12)(K).

The 2014 amendment, effective April 15, 2014, added subparagraphs (3)(NNN) through (3)(TTT); added subparagraph (4)(D); rewrote subparagraph (12)(T); substituted a semicolon for a period at the end of subparagraph (12)(U); and added subparagraphs (12)(V) through (12)(Z).

Editor's notes. — Ga. L. 2012, p. 40, § 1/SB 370, not codified by the General Assembly, which provides for the annual update of the identity of controlled substances and dangerous drugs, is dedicated to the memory of Chase Corbitt Burnett and shall be known and may be cited as "Chase's Law."

JUDICIAL DECISIONS

Sufficient evidence of selling trifluoromethylphenyl piperazine. — Combined evidence established that the defendant actively participated in and was a party to the three separate sales of a controlled substance based on the defendant freely and voluntarily admitting that during the last controlled drug buy, the defendant supplied an informant with 500-600 pills, the pills tested positive for trifluoromethylphenyl piperazine, and that defendant acted the same during all of the controlled purchases. Walker v. State, 323 Ga. App. 685, 747 S.E.2d 691 (2013).

16-13-26. Schedule II.

JUDICIAL DECISIONS

Evidence sufficient to support conviction of sale of methamphetamine. — Evidence that a defendant sold an undercover officer methamphetamine on two occasions, with one sale of more than 28 grams, and that the defendant participated in a later, larger drug deal, supported the defendant's convictions for trafficking in methamphetamine, O.C.G.A. § 16-13-31(e), and sale of methamphetamine under O.C.G.A. §§ 16-13-26(3)(B) and 16-13-30(b). Culajay v. State, 309 Ga. App. 631, 710 S.E.2d 846 (2011).

Remand for sentencing required. — Because it was unclear which schedule, which Code section, and which sentencing range would apply to the substances the defendant pled guilty to selling, the defendant's sentences had to be vacated and the case remanded to the trial court for a hearing to determine on which schedule the controlled substances at issue belonged, and to impose a lawful and appropriate sentence. Williams v. State, 320 Ga. App. 243, 739 S.E.2d 727 (2013).

Cited in State v. Harrell, 323 Ga. App. 56, 744 S.E.2d 867 (2013).

16-13-27. Schedule III.

The controlled substances listed in this Code section are included in Schedule III:

(1) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, included as having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Those compounds, mixtures, or preparations in dosage unit forms containing any stimulant substances which are listed as excepted compounds by the State Board of Pharmacy pursuant to this article, and any other drug of quantitative composition so excepted or which is the same except that it contains a lesser quantity of controlled substances;

(B) Benzphetamine;

(C) Chlorphentermine;

(D) Clortermine;

(E) Phendimetrazine;

(2) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances included as having a depressant effect on the central nervous system:

(A) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salts thereof and

one or more active medicinal ingredients which are not listed in any schedule;

(B) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the State Board of Pharmacy for marketing only as a suppository;

(C) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof;

(D) Chlorhexadol;

(E) Reserved;

(F) Lysergic acid;

(G) Lysergic acid amide;

(H) Methyprylon;

(I) Sulfondiethylmethane;

(J) Sulfonethylmethane;

(K) Sulfonmethane;

(L) Tiletamine/Zolazepam (Telazol);

(3) Nalorphine;

(4) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of the following narcotic drugs, or any salts thereof:

(A) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(B) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(C) Not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(D) Not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(E) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(F) Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(G) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(H) Not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) The State Board of Pharmacy may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in paragraphs (1) and (2) of this Code section from the application of all or any part of this article if the compound, mixture, or preparation contains one or more active, medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system;

(6) Any anabolic steroid or any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth. Such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the secretary of health and human services for such administration:

(A) Boldenone;

(A.5) Boldione (Androsta-1,4-diene-3,17-dione);

(B) Chlorotestosterone;

(C) Clostebol;

(D) Dehydrochlormethyltestosterone;

(D.1) Desoxymethyltestosterone (17a-methyl-5a-androst-2-en-17-ol, madol);

(E) Dihydrotestosterone;

(F) Drostanolone;

(G) Ethylestrenol;

(H) Fluoxymesterone;

(I) Formebolone;

(J) Mesterolone;

(K) Methandienone;

(L) Methandranone;

(M) Methandriol;

(N) Methandrostenolone;

(N.5) Methasterone;

(O) Methenolone;

(P) Methyltestosterone;

(Q) Mibolerone;

(R) Nandrolone;

(S) Norethandrolone;

(T) Oxandrolone;

(U) Oxymesterone;

(V) Oxymetholone;

(V.5) Prostanozol;

(W) Stanolone;

(X) Stanozolol;

(Y) Testolactone;

(Z) Testosterone;

(AA) Trenbolone;

(BB) 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione);

(7) Ketamine;

(8) Dronabinol (synthetic) in sesame oil and encapsulated in a U.S. Food and Drug Administration approved drug product also known as Marinol;

(9) Sodium oxybate, when the FDA approved form of this drug is in a container labeled in compliance with subsection (a) or (b) of Code

Section 26-3-8, in the possession of a registrant permitted to dispense the drug, or in the possession of a person to whom it has been lawfully prescribed;

(10) Buprenorphine;

(11) Embutramide;

(12) Any drug product in hard or soft gelatin capsule form containing natural dronabinol (derived from the cannabis plant) or synthetic dronabinol (produced from synthetic materials) in sesame oil, for which an abbreviated new drug application (ANDA) has been approved by the FDA under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)) which references as its listed drug the drug product referred to in paragraph (8) of this Code section;

(13) Perampanel and its salts, isomers, and salts of isomers. (Code 1933, § 79A-808, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1978, p. 1668, § 8; Ga. L. 1980, p. 1746, § 6; Ga. L. 1982, p. 3, § 16; Ga. L. 1982, p. 2403, §§ 13, 18; Ga. L. 1989, p. 233, § 3; Ga. L. 1991, p. 312, § 1; Ga. L. 1992, p. 6, § 16; Ga. L. 1992, p. 1131, §§ 3, 4; Ga. L. 1996, p. 356, § 2; Ga. L. 1997, p. 1311, § 2; Ga. L. 1998, p. 778, § 1; Ga. L. 2000, p. 1317, § 2; Ga. L. 2003, p. 349, § 3; Ga. L. 2008, p. 169, § 4/HB 1090; Ga. L. 2009, p. 126, § 2/HB 368; Ga. L. 2011, p. 656, §§ 3, 4/SB 93; Ga. L. 2013, p. 71, § 2/HB 302; Ga. L. 2014, p. 217, § 4/HB 835.)

The 2013 amendment, effective April 18, 2013, added subparagraphs (6)(N.5) and (6)(V.5).

The 2014 amendment, effective April 15, 2014, substituted a semicolon for a period at the end of paragraph (12); and added paragraph (13).

JUDICIAL DECISIONS

Remand for sentencing required. — Because it was unclear which schedule, which Code section, and which sentencing range would apply to the substances the defendant pled guilty to selling, the defendant's sentences had to be vacated and the case remanded to the trial court for a hearing to determine on which schedule the controlled substances at issue belonged, and to impose a lawful and appropriate sentence. Williams v. State, 320 Ga. App. 243, 739 S.E.2d 727 (2013).

16-13-28. Schedule IV.

(a) The controlled substances listed in this Code section are included in Schedule IV. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specified chemical

designation, included as having a stimulant or depressant effect on the central nervous system or a hallucinogenic effect:

(1) Alprazolam;

(1.5) Armodafinil;

(2) Barbital;

(2.1) Bromazepam;

(2.15) Butorphanol;

(2.2) Camazepam;

(2.25) Carisoprodol;

(2.3) Cathine;

(3) Chloral betaine;

(4) Chloral hydrate;

(5) Chlordiazepoxide, but not including librax (chlordiazepoxide hydrochloride and clidinium bromide) or menrium (chlordiazepoxide and water soluble esterified estrogens);

(5.1) Clobazam;

(6) Clonazepam;

(7) Clorazepate;

(7.1) Clotiazepam;

(7.2) Cloxazolam;

(7.3) Delorazepam;

(8) Desmethyldiazepam;

(8.5) Dexfenfluramine;

(9) Reserved;

(10) Diazepam;

(11) Diethylpropion;

(11.05) Difenoxin;

(11.1) Estazolam;

(12) Ethchlorvynol;

(13) Ethinamate;

(13.1) Ethyl loflazepate;

(13.2) Fencamfamin;

(14) Fenfluramine;

(14.1) Flunitrazepam;

(14.2) Fenproporex;

(15) Flurazepam;

(15.3) Fospropofol;

(16) Halazepam;

(16.1) Haloxazolam;

(16.15) Indiplon;

(16.2) Ketazolam;

(16.3) Lometazepam;

(16.4) Loprazolam;

(17) Lorazepam;

(17.5) Lorcaserin;

(18) Mazindol;

(19) Mebutamate;

(19.1) Medazepam;

(19.2) Mefenorex;

(20) Meprobamate;

(21) Methohexital;

(22) Methylphenobarbital;

(22.1) Midazolam;

(22.15) Modafinil;

(22.2) Nimetazepam;

(22.3) Nitrazepam;

(22.4) Nordiazepam;

(23) Oxazepam;

(23.1) Oxazolam;

(24) Paraldehyde;

(25) Pemoline;

(26) Pentazocine;

(27) Petrichloral;

(28) Phenobarbital;

(29) Phentermine;

(29.1) Pipradrol;

(30) Prazepam;

(30.03) Propofol;

(30.05) Propoxyphene (including all salts and optical isomers);

(30.1) Quazepam;

(30.2) Sibutramine;

(30.3) SPA (-)-1-dimethylamino-1, 2-diphenylethane;

(31) Temazepam;

(31.5) Tramadol [2-((dimethylamino)methyl)-1-(3-methoxyphenyl)cyclohexanol, its salts, optical and geometric isomers, and salts of these isomers];

(32) Triazolam;

(32.5) Zaleplon;

(33) Zolpidem;

(34) Zopiclone.

(b) The State Board of Pharmacy may except by rule any compound, mixture, or preparation containing any depressant, stimulant, or hallucinogenic substance listed in subsection (a) of this Code section from the application of all or any part of this article if the compound, mixture, or preparation contains one or more active, medicinal ingredients not having a depressant or stimulant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant or stimulant effect on the central nervous system. (Code 1933, § 79A-809, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1977, p. 1287, § 1; Ga. L. 1979, p. 859, § 8; Ga. L. 1980, p. 1746, § 7; Ga. L. 1981, p. 557, § 4; Ga. L. 1982, p. 3, § 16; Ga. L. 1982, p. 2403, §§ 14, 19; Ga. L. 1984, p. 22, § 16; Ga. L. 1985, p. 1219, § 4; Ga. L. 1986, p. 10, § 16; Ga. L. 1986, p. 1555, § 4; Ga. L. 1987, p. 261, § 5; Ga. L. 1989, p. 233, § 4; Ga. L. 1990, p. 8, § 16; Ga. L. 1993, p. 590, § 2; Ga. L. 1994, p. 169, § 5; Ga. L. 1996, p. 1023, § 1; Ga. L. 1997, p. 1311, § 3; Ga. L. 1998, p. 778, § 2; Ga. L. 1999, p. 643, § 1; Ga. L. 2000, p. 1317, § 3; Ga. L. 2003, p. 349, § 4; Ga. L. 2006, p. 219, § 2/HB 1054; Ga. L. 2007, p. 47, § 16/SB 103; Ga. L. 2008, p. 169, § 5/HB 1090; Ga. L. 2009, p. 126, §§ 3, 4/HB 368; Ga. L. 2010, p.

860, § 3/SB 353; Ga. L. 2011, p. 656, § 5/SB 93; Ga. L. 2014, p. 217, § 5/HB 835.)

The 2014 amendment, effective April 15, 2014, added paragraphs (a)(17.5) and (a)(31.5).

JUDICIAL DECISIONS

Identification of drug.
Defendant was improperly convicted of violating the Georgia's Controlled Substances Act, O.C.G.A. § 16-13-20, by distributing a Schedule IV drug, Zolpidem, which was commonly known as Ambien, O.C.G.A. §§ 16-13-28(a)(33) and 16-13-30(b), because the state failed to prove that the drug Ambien was regulated by law, and the trade name of a statutorily designated controlled substance was not the proper subject of judicial notice; while the state presented evidence that the defendant admitted to distributing Ambien and produced testimony that "Ambien" was a Schedule IV controlled substance, the state was required to identify "Ambien" as a trade name for Zolpidem through admissible evidence. DeLong v. State, 310 Ga. App. 518, 714 S.E.2d 98 (2011).

16-13-29. Schedule V.

The controlled substances listed in this Code section are included in Schedule V:

(1) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or salts thereof, which also contains one or more nonnarcotic, active, medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(A) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

(B) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

(C) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

(D) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(E) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(2) Lacosamide;

(3) Pregabalin;

(4) Pyrovalerone;

(5) Pseudoephedrine as an exempt over-the-counter (OTC) Schedule V controlled substance distributed in the same manner as set forth in Code Section 16-13-29.2; provided, however, that such exemption shall take effect immediately and shall not require rulemaking by the State Board of Pharmacy; provided, further, that wholesale drug distributors located within this state and licensed by the State Board of Pharmacy and which are registered and regulated by the U.S. Drug Enforcement Administration (DEA) shall not be subject to any board requirements for controlled substances for the storage, reporting, recordkeeping, or physical security of drug products containing pseudoephedrine which are more stringent than those included in DEA regulations; or

(6) Ezogabine. (Code 1933, § 79A-810, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1978, p. 1668, § 9; Ga. L. 1979, p. 859, § 9; Ga. L. 1980, p. 1746, § 8; Ga. L. 1981, p. 557, § 5; Ga. L. 1984, p. 1019, § 2; Ga. L. 1986, p. 1555, § 5; Ga. L. 1989, p. 233, § 5; Ga. L. 1993, p. 590, § 3; Ga. L. 2003, p. 349, § 5; Ga. L. 2007, p. 605, § 2/HB 286; Ga. L. 2010, p. 860, § 4/SB 353; Ga. L. 2011, p. 656, § 6/SB 93; Ga. L. 2012, p. 40, § 4/SB 370.)

The 2012 amendment, effective March 27, 2012, deleted "or" at the end of paragraph (4); substituted "; or" for the period at the end of paragraph (5); and added paragraph (6).

Editor's notes. — Ga. L. 2012, p. 40, § 1/SB 370, not codified by the General Assembly, which provides for the annual update of the identity of controlled substances and dangerous drugs, is dedicated to the memory of Chase Corbitt Burnett and shall be known and may be cited as "Chase's Law."

16-13-30. Purchase, possession, manufacture, distribution, or sale of controlled substances or marijuana; penalties.

(a) Except as authorized by this article, it is unlawful for any person to purchase, possess, or have under his or her control any controlled substance.

(b) Except as authorized by this article, it is unlawful for any person to manufacture, deliver, distribute, dispense, administer, sell, or possess with intent to distribute any controlled substance.

(c) Except as otherwise provided, any person who violates subsection (a) of this Code section with respect to a controlled substance in Schedule I or a narcotic drug in Schedule II shall be guilty of a felony and, upon conviction thereof, shall be punished as follows:

(1) If the aggregate weight, including any mixture, is less than one gram of a solid substance, less than one milliliter of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of less than one gram, by imprisonment for not less than one nor more than three years;

(2) If the aggregate weight, including any mixture, is at least one gram but less than four grams of a solid substance, at least one milliliter but less than four milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of at least one gram but less than four grams, by imprisonment for not less than one nor more than eight years; and

(3)(A) Except as provided in subparagraph (B) of this paragraph, if the aggregate weight, including any mixture, is at least four grams but less than 28 grams of a solid substance, at least four milliliters but less than 28 milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of at least four grams but less than 28 grams, by imprisonment for not less than one nor more than 15 years.

(B) This paragraph shall not apply to morphine, heroin, or opium or any salt, isomer, or salt of an isomer; rather, the provisions of Code Section 16-13-31 shall control these substances.

(d) Except as otherwise provided, any person who violates subsection (b) of this Code section with respect to a controlled substance in Schedule I or Schedule II shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 30 years. Upon conviction of a second or subsequent offense, he or she shall be imprisoned for not less than ten years nor more than 40 years or life imprisonment. The provisions of subsection (a) of Code Section 17-10-7 shall not apply to a sentence imposed for a second such offense; provided, however, that the remaining provisions of Code Section 17-10-7 shall apply for any subsequent offense.

(e) Any person who violates subsection (a) of this Code section with respect to a controlled substance in Schedule II, other than a narcotic drug, shall be guilty of a felony and, upon conviction thereof, shall be punished as follows:

(1) If the aggregate weight, including any mixture, is less than two grams of a solid substance, less than two milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of less than two grams, by imprisonment for not less than one nor more than three years;

(2) If the aggregate weight, including any mixture, is at least two grams but less than four grams of a solid substance, at least two milliliters but less than four milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of at least two grams but less than four grams, by imprisonment for not less than one nor more than eight years; and

(3) If the aggregate weight, including any mixture, is at least four grams but less than 28 grams of a solid substance, at least four

milliliters but less than 28 milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of at least four grams but less than 28 grams, by imprisonment for not less than one nor more than 15 years.

(f) Upon a third or subsequent conviction for a violation of subsection (a) of this Code section with respect to a controlled substance in Schedule I or II or subsection (i) of this Code section, such person shall be punished by imprisonment for a term not to exceed twice the length of the sentence applicable to the particular crime.

(g) Except as provided in subsection (l) of this Code section, any person who violates subsection (a) of this Code section with respect to a controlled substance in Schedule III, IV, or V shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than three years. Upon conviction of a third or subsequent offense, he or she shall be imprisoned for not less than one year nor more than five years.

(h) Any person who violates subsection (b) of this Code section with respect to a controlled substance in Schedule III, IV, or V shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.

(i)(1) Except as authorized by this article, it is unlawful for any person to possess or have under his or her control a counterfeit substance. Any person who violates this paragraph shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than two years.

(2) Except as authorized by this article, it is unlawful for any person to manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute a counterfeit substance. Any person who violates this paragraph shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.

(j)(1) It shall be unlawful for any person to possess, have under his or her control, manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute marijuana.

(2) Except as otherwise provided in subsection (c) of Code Section 16-13-31 or in Code Section 16-13-2, any person who violates this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.

(k) It shall be unlawful for any person to hire, solicit, engage, or use an individual under the age of 17 years, in any manner, for the purpose of manufacturing, distributing, or dispensing, on behalf of the solicitor,

any controlled substance, counterfeit substance, or marijuana unless the manufacturing, distribution, or dispensing is otherwise allowed by law. Any person who violates this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 20 years or by a fine not to exceed $20,000.00, or both.

(l)(1) Any person who violates subsection (a) of this Code section with respect to flunitrazepam, a Schedule IV controlled substance, shall be guilty of a felony and, upon conviction thereof, shall be punished as follows:

(A) If the aggregate weight, including any mixture, is less than two grams of a solid substance of flunitrazepam, less than two milliliters of liquid flunitrazepam, or if flunitrazepam is placed onto a secondary medium with a combined weight of less than two grams, by imprisonment for not less than one nor more than three years;

(B) If the aggregate weight, including any mixture, is at least two grams but less than four grams of a solid substance of flunitrazepam, at least two milliliters but less than four milliliters of liquid flunitrazepam, or if the flunitrazepam is placed onto a secondary medium with a combined weight of at least two grams but less than four grams, by imprisonment for not less than one nor more than eight years; and

(C) If the aggregate weight, including any mixture, is at least four grams of a solid substance of flunitrazepam, at least four milliliters of liquid flunitrazepam, or if the flunitrazepam is placed onto a secondary medium with a combined weight of at least four grams, by imprisonment for not less than one nor more than 15 years.

(2) Any person who violates subsection (b) of this Code section with respect to flunitrazepam, a Schedule IV controlled substance, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 30 years. Upon conviction of a second or subsequent offense, such person shall be punished by imprisonment for not less than ten years nor more than 40 years or life imprisonment. The provisions of subsection (a) of Code Section 17-10-7 shall not apply to a sentence imposed for a second such offense, but that subsection and the remaining provisions of Code Section 17-10-7 shall apply for any subsequent offense.

(m) As used in this Code section, the term "solid substance" means a substance that is not in a liquid or gas form. Such term shall include tablets, pills, capsules, caplets, powder, crystal, or any variant of such items. (Code 1933, § 79A-811, enacted by Ga. L. 1974, p. 221, § 1; Ga.

L. 1975, p. 1112, § 1; Ga. L. 1979, p. 1258, § 1; Ga. L. 1980, p. 432, § 1; Ga. L. 1985, p. 149, § 16; Ga. L. 1990, p. 992, § 1; Ga. L. 1992, p. 2041, § 1; Ga. L. 1996, p. 1023, §§ 1.1, 2; Ga. L. 1997, p. 1311, § 4; Ga. L. 2012, p. 899, §§ 3-7A, 3-7B, 3-7C/HB 1176; Ga. L. 2013, p. 141, § 16/HB 79; Ga. L. 2014, p. 780, §§ 2-1, 3-1/SB 364.)

The 2012 amendment, effective July 1, 2014, inserted "or her" in subsection (a); in subsection (c), substituted "as follows:" for "by imprisonment for not less than two years nor more than 15 years. Upon conviction of a second or subsequent offense, he shall be imprisoned for not less than five years nor more than 30 years."; added paragraphs (c)(1) through (c)(3); in subsection (e), substituted "as follows:" for "by imprisonment for not less than two years nor more than 15 years. Upon conviction of a second or subsequent offense, he shall be punished by imprisonment for not less than five years nor more than 30 years."; added paragraphs (e)(1) through (e)(3); substituted the present provisions of subsection (f) for "Reserved."; in subsection (g), in the first sentence, substituted "Except as provided in subsection (l) of this Code section, any" for "Any" and substituted "three years" for "five years", and, in the second sentence, substituted "third or subsequent offense, he or she shall" for "second or subsequent offense, he shall" and substituted "five years" for "ten years"; designated former subsection (i) as present paragraph (i)(1); in paragraph (i)(1), in the first sentence, substituted "or her control" for "his control, manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute", in the second sentence, substituted "paragraph" for "subsection" and substituted "two years" for "ten years"; added paragraph (i)(2); in paragraph (j)(1), substituted "It shall be" for "It is", and inserted "or her" near the middle; in paragraph (l)(1), substituted "as follows:" for "by imprisonment for not less than two years nor more than 15 years. Upon conviction of a second or subsequent offense, such person shall be punished by imprisonment for not less than five years nor more than 30 years."; added subparagraphs (l)(1)(A) through (l)(1)(C); and added subsection (m). See editor's note for applicability.

The 2013 amendment, effective July 1, 2014, part of an Act to revise, modernize, and correct the Code, substituted "at least two millileters" for "at lease two millileters" in paragraph (e)(2) and subparagraph (l)(1)(B) and substituted "variant" for "varient" in subsection (m).

The 2014 amendment, effective April 28, 2014, and effective July 1, 2014, substituted "a substance that is not in a liquid or gas form. Such term shall include tablets, pills, capsules, caplets, powder, crystal," for "tablets, pills, capsules, caplets," in subsection (m).

Editor's notes. — Ga. L. 2012, p. 899, § 9-1(b)(2)/HB 1176, not codified by the General Assembly, provides: "Section 3-7C of this Act shall become effective on July 1, 2014, at which time, Section 3-7B of this Act shall be superceded and repealed in its entirety, and Section 3-7C of this Act shall apply to offenses which occur on or after July 1, 2014. Any offense occurring before July 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act."

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012).

JUDICIAL DECISIONS

Analysis

POSSESSION
DELIVERY AND DISTRIBUTION
MARIJUANA

General Consideration

No abuse of discretion in refusing to sever charges. — Trial court did not abuse the court's discretion by refusing to sever a defendant's drug charges from the defendant's trial on a charge of influencing a witness because evidence of either crime would have been admissible at the trial of the other and the charged offenses were neither so numerous nor so complex that the jury was unable to parse the evidence and correctly apply the law with regard to each charge. Perry v. State, 317 Ga. App. 885, 733 S.E.2d 57 (2012).

State failed to prove drug regulated by law. — Defendant was improperly convicted of violating the Georgia's Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., by distributing a Schedule IV drug, Zolpidem, which was commonly known as Ambien, O.C.G.A. §§ 16-13-28(a)(33) and 16-13-30(b), because the state failed to prove that the drug Ambien was regulated by law, and the trade name of a statutorily designated controlled substance was not the proper subject of judicial notice; while the state presented evidence that the defendant admitted to distributing Ambien and produced testimony that "Ambien" was a Schedule IV controlled substance, the state was required to identify "Ambien" as a trade name for Zolpidem through admissible evidence. DeLong v. State, 310 Ga. App. 518, 714 S.E.2d 98 (2011).

Manufacturing methamphetamine. Evidence that the defendant owned the house where the ingredients and equipment were found, the defendant talked to the codefendant about whether the codefendant should abscond and bought the codefendant a truck, and the defendant made a list of pharmacy directions for the codefendant so that the codefendant could avoid legal restrictions on the purchase of ingredients was sufficient to support a conviction for attempt to manufacture methamphetamine. Taylor v. State, 320 Ga. App. 596, 740 S.E.2d 327 (2013).

Prior similar act admissible. Trial court did not abuse the court's discretion in admitting similar transaction evidence because both the prior incident and the incident for which the defendant was convicted involved the possession of cocaine since the prior possession was for the purpose of distribution, inasmuch as the evidence showed that the defendant did, in fact, distribute cocaine on that occasion, and the possession for which the defendant was convicted was for an unknown purpose and not clearly for personal use; one incident involved possession and sale of less than one gram of cocaine, the other involved possession of less than two grams of cocaine, and both incidents occurred in the county within a span of two weeks. Gaudlock v. State, 310 Ga. App. 149, 713 S.E.2d 399 (2011).

Erroneous admission of prior conviction harmless. — Trial court's admission of the defendant's prior convictions for possession of cocaine was erroneous because the state did not present any testimony at trial establishing the prior convictions, but rather, the state's evidence was limited to the introduction of copies of the defendant's guilty pleas and convictions for the prior drug possession offenses; however, in light of the overwhelming competent evidence establishing the defendant's guilt of the sale of cocaine, it was unlikely that the erroneous admission of the prior possession offenses contributed to the verdict. Perry v. State, 314 Ga. App. 575, 724 S.E.2d 874 (2012).

Trial court did not abuse the court's discretion in admitting evidence of the defendant's prior attempts to manufacture methamphetamine because the state needed the evidence of the defendant's prior drug conviction to show the defendant's bent of mind and course of conduct with respect to the methamphetamine offense at issue, criminal attempt to manufacture methamphetamine in violation of O.C.G.A. §§ 16-4-1 and 16-13-30(b); the defendant disclaimed any involvement with or knowledge of a methamphetamine laboratory. Newton v. State, 313 Ga. App. 889, 723 S.E.2d 95 (2012).

Based on the defendant's position that the defendant was not involved with a methamphetamine laboratory, as well as the similarity of the defendant's prior drug crime with criminal attempt to manufacture methamphetamine, the trial court did not abuse the court's discretion in admitting the evidence of the defendant's prior attempts to manufacture methamphetamine for the purpose of showing the defendant's bent of mind and course of conduct; the trial court was authorized to find that the probative value of the similar transaction evidence outweighed its prejudicial effect, and the trial court provided jury instructions that limited consideration of the similar transaction evidence to the appropriate purposes and provided guidance so as to diminish its prejudicial impact. Newton v. State, 313 Ga. App. 889, 723 S.E.2d 95 (2012).

Revelation of the identity of a confidential informant. — Defendant was not entitled to the identity of a confidential informant (CI) who purchased cocaine from the defendant in two controlled buys because, to the extent that the defendant wished to call the CI to impeach the CI or the investigating officer's testimony, the disclosure of the CI's identity was not required in that the investigating officer engaged in visual surveillance throughout the controlled buy operations and clearly observed the defendant when the defendant sold drugs to the CI and an audiotape recording of one controlled buy diminished the need for the CI to amplify or refute any conflicting testimony. Chandler v. State, 317 Ga. App. 406, 731 S.E.2d 88 (2012).

Inconsistency in indictment caused no prejudice. — Defendant's conviction for possession of a controlled substance was proper despite the indictment charging the defendant with possession of a controlled substance with intent to distribute because the allegations in the indictment tracked the language of possession of a controlled substance and fully apprised the defendant of the offense charged, the defendant failed to show that the defense was prejudiced in any way by the inconsistency between the denomination of the offense and the allegations in the indictment, and the defendant requested a jury charge on the offense of possession of a controlled substance as a lesser included offense of possession of a controlled substance with intent to distribute. Bryant v. State, 320 Ga. App. 838, 740 S.E.2d 772 (2013).

Jury instruction insufficient.

Reversal of a conviction for conspiracy to violate the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., through a violation of O.C.G.A. § 16-13-30(j)(1), was required because the trial court failed to provide any limiting instruction informing jurors that the purchaser and the buyer in a drug transaction could not conspire together. Darville v. State, 289 Ga. 698, 715 S.E.2d 110 (2011).

Cited in Foster v. State, 314 Ga. App. 642, 725 S.E.2d 777 (2012); Buchanan v. State of Ga., 319 Ga. App. 525, 737 S.E.2d 321 (2013); Howard v. State of Ga., 321 Ga. App. 881, 743 S.E.2d 540 (2013); State v. Harrell, 323 Ga. App. 56, 744 S.E.2d 867 (2013).

Sentencing

Construed with O.C.G.A. § 17-10-7.

Defendant sentenced to life in prison without parole, under O.C.G.A. §§ 16-13-30(d) and 17-10-7(c), based on the defendant's prior convictions stemming from guilty pleas, was not entitled to habeas relief on the basis of the defendant's trial counsel's failure to review the transcripts of the defendant's prior plea colloquies because: (1) no per se rule required counsel to review the transcripts; and (2) counsel otherwise adequately investigated the validity of the prior convictions. Barker v. Barrow, 290 Ga. 711, 723 S.E.2d 905 (2012), cert. denied, U.S. , 133 S. Ct. 540, 184 L. Ed. 2d 354 (2012).

Motion to correct void sentence. — Sentencing court should have dismissed the defendant's motion to vacate a void sentence for lack of jurisdiction because the defendant's motion presented no cognizable claim that a sentence was void as constituting punishment the law did not allow. The defendant only challenged the existence or validity of the factual or adjudicative predicate for the recidivist sentence. Kimbrough v. State, 325 Ga. App.

Sentencing (Cont'd)

519, 754 S.E.2d 109 (2014).

Sentence outside statutory range. — Since the ten-year felony sentence, entered by the trial court and imposed upon defendant's convictions for possession of a controlled substance, possession of marijuana, and improper turn, was outside the statutory range in O.C.G.A. § 16-13-30(g), the sentence was void. Accordingly, the trial court had jurisdiction to resentence defendant at any time. Simmons v. State, 315 Ga. App. 82, 726 S.E.2d 573 (2012).

Sentence within authorized range. No modification of defendant's sentence or hearing was mandated because the trial court considered the positive evidence presented by the defendant, weighed that evidence with the evidence of the defendant's prior criminal history, and the seriousness of the charge before pronouncing the sentence; the sentence was authorized by O.C.G.A.§ 16-13-30, and the record did not support the defendant's ineffective assistance of counsel claim. Benford v. State, 316 Ga. App. 95, 729 S.E.2d 414 (2012).

Remand for resentencing required. — Because it was unclear which schedule, which Code section, and which sentencing range would apply to the substances the defendant pled guilty to selling, the defendant's sentences had to be vacated and the case remanded to the trial court for a hearing to determine on which schedule the controlled substances at issue belonged, and to impose a lawful and appropriate sentence. Williams v. State, 320 Ga. App. 243, 739 S.E.2d 727 (2013).

Search and Seizure

First-tier encounter. — Trial court did not err in denying the defendant's motion for new trial after the defendant was convicted of possession of cocaine because the court properly denied a motion to suppress the defendant's statement to a police officer that the defendant had a crack pipe in a pocket; the initial interaction between the officer and the defendant was a first-tier consensual encounter, and thus, the defendant was free to disregard the officer's questions and walk away. Minor v. State, 314 Ga. App. 253, 723 S.E.2d 702 (2012).

Trial court properly denied the defendant's motion to suppress with regard to the defendant's drug conviction because the case involved a first-tier encounter wherein the officer asked for consent to search, which was given by the defendant and, therefore, the search was not a seizure and did not require articulable suspicion. Carter v. State, 319 Ga. App. 624, 737 S.E.2d 724 (2013).

Scope of consent.

State failed to prove that an officer's opening of a pill container found in defendant's pocket was justified based on consent, when defendant only consented to the removal of the pill box from defendant's pocket, and the box was not immediately identifiable as contraband. Defendant's convictions on controlled substances charges were reversed. McCormack v. State, 325 Ga. App. 183, 751 S.E.2d 904 (2013).

Valid consent. — Trial court did not err by denying the defendant's motion to suppress because the evidence established that the defendant's consent was voluntary in that the defendant signed the consent forms, gave the officer the key to the home, and the record showed that during the defendant's detention, no interrogation or questioning occurred, and the duration of the detention was not overly long; further, the defendant did not appear intoxicated, spoke fluent English, was not being punished or threatened, and the consent came after the defendant spontaneously sought out the officer to talk. Durham v. State, 320 Ga. App. 81, 739 S.E.2d 389 (2013).

Valid consent from handcuffed defendant. — Defendant's conviction for possession of cocaine with the intent to distribute was upheld on appeal as the defendant failed to establish that the motion to suppress would have been granted had counsel not waived the issue because, even in handcuffs, the defendant voluntarily consented to the search of the vehicle and the defendant failed to show that the consent was invalid. Blitch v. State, 323 Ga. App. 677, 747 S.E.2d 863 (2013).

Pat-down search proper. — Trial court did not err in denying the defen-

dant's motion to suppress drug evidence found on the defendant's person because the defendant's detention and pat-down was justified; a narcotics investigator was justified in believing that the investigator's safety was at risk based on the circumstances, including that officers were searching a house to execute an arrest warrant for a resident thereof, suspicion of drug activity at the house had been reported by neighbors, and the defendant, who was sitting up in bed, failed to comply with the investigator's repeated commands that the defendant display the defendant's hands, which were obscured under the covers. Jones v. State, 314 Ga. App. 247, 723 S.E.2d 697 (2012).

Plain feel doctrine. — Trial court did not err in denying the defendant's motion to suppress drug evidence found on the defendant's person because the seizure of the items in the defendant's pockets was lawful; under the plain feel doctrine, a narcotics investigator was entitled to seize the item, and the evidence was properly admitted; it was unnecessary for the investigator to conclusively identify what type of drug the defendant was carrying in order for the plain feel doctrine to make the seizure of the contraband lawful. Jones v. State, 314 Ga. App. 247, 723 S.E.2d 697 (2012).

Vehicle stop for seatbelt violation.

Defendant's conviction on one count of felony possession of marijuana was upheld on appeal and the trial court did not err in denying the defendant's motion to suppress based on the defendant's assertion that the initial traffic stop was illegal because the initial stop, as well as the brief detention, was authorized as a result of the officer observing the defendant not wearing a seat belt. Davis v. State, 318 Ga. App. 166, 733 S.E.2d 453 (2012).

Probable cause for arrest.

Trial court did not err in denying the defendant's motion to suppress evidence a police officer recovered from a rental car because the officer had reasonable grounds for detaining the defendant since the officer found the defendant and a friend in the parking lot of a closed business late at night, knew that several burglaries and thefts had occurred in the area recently, and observed that the defendant and the friend appeared to be nervous when the officer spoke with them; in the course of securing a firearm the officer saw a firearm in the center console of the rental car, the officer saw in plain view a digital scale with white residue, affording the officer probable cause to effect a custodial arrest of the defendant. Culpepper v. State, 312 Ga. App. 115, 717 S.E.2d 698 (2011).

Voluntary consent to search hotel room. — Trial court did not err in denying a motion to suppress evidence a police officer seized in a hotel room because the trial court was authorized to find that the state satisfied the state's burden of showing that the defendant's consent to enter the hotel room was voluntary and not the product of coercion, express or implied; the officer's testimony and the defendant's statement supported a finding that the officer requested and received the defendant's consent to enter the hotel room under circumstances that did not suggest either coercion or threat, and the trial court was authorized to infer that the defendant's consent to search was freely given in the calculated hope that the officer would not find the hidden contraband. Liles v. State, 311 Ga. App. 355, 716 S.E.2d 228 (2011).

Evidence seized from search based on valid arrest warrant. — Trial court did not err in denying the defendant's motion to suppress evidence found on the defendant's person because officers' search of a resident's house, where the officers found the defendant with a methamphetamine pipe, was legal since the police reasonably believed that the resident was in the house at the time of their entry based upon information from a neighbor and the fact that the vehicle registered to the resident was parked in front of the house; because the police had a valid arrest warrant for the resident and limited their search to those areas where the resident could be located, the fact that the officers could have been motivated to enter the house to search for drugs was immaterial and did not render the entry and subsequent seizure of evidence from the defendant illegal. Jones v. State, 314 Ga. App. 247, 723 S.E.2d 697 (2012).

Trial court did not err in denying the

Search and Seizure (Cont'd)

defendant's motion to suppress evidence seized from a residence because an investigator's knowledge was not so remote that it made it unlikely that methamphetamine manufacturing activities would be found at the premises at the time the warrant was issued; the investigator's knowledge coincided with an officer's detection of a strong odor of ether at the premises, and the search warrant was both issued and executed on the same day that the odor was detected. Newton v. State, 313 Ga. App. 889, 723 S.E.2d 95 (2012).

Sufficient probable cause for issuance of search warrant. — Trial court did not err in denying the defendant's motion to suppress evidence seized from a residence because the totality of the circumstances presented probable cause supporting the magistrate's issuance of a search warrant of the premises; in addition to the strong odor of ether, a DEA-trained officer knew that the odor was indicative of a methamphetamine laboratory operation, there was a prior report that a methamphetamine laboratory was being operated on the premises, and a co-defendant had previously admitted to selling methamphetamine. Newton v. State, 313 Ga. App. 889, 723 S.E.2d 95 (2012).

Presence in high drug area insufficient for stop. — Officer did not have specific articulable facts sufficient to give rise to a reasonable suspicion of criminal activity and therefore the court should have granted the defendant's motion to suppress the cocaine and marijuana evidence. Specifically, while the officer believed that the defendant was involved in a criminal activity because the defendant briefly visited a motel located in a high drug area, and the defendant's brief visit was consistent with drug activity, a person's mere presence in a high crime area does not give rise to reasonable suspicion of criminal activity, even if police observe conduct which the police believe consistent with a general pattern of such activity. Adkinson v. State, 322 Ga. App. 1, 743 S.E.2d 563 (2013).

Controlled buys demonstrated reliability of informant justifying search. — With regard to drug-related convictions, the trial court properly denied defendant's motion to suppress because the search warrant was supported by probable cause in that the confidential informant took a position against penal interest by reporting to officers that the informant bought drugs from the defendant, the officer stated that the information supplied by the confidential informant was confirmed by conducting three controlled drug purchases from the defendant, and the controlled buys strongly corroborated the reliability of the informant and demonstrated a fair probability that contraband would be found in the defendant's house. Reid v. State, 321 Ga. App. 653, 742 S.E.2d 166 (2013).

Possession

Evidence sufficient to prove possession and intent to distribute. — Evidence that small baggies of cocaine were found in a large plastic bag on the ground, where the defendant had been observed dropping what appeared to the officer to be a baseball-size clear looking bag, permitted a rational trier of fact to infer that the defendant had been in possession of the cocaine. Ample evidence showed the defendant's intent to distribute the cocaine. Barber v. State, 317 Ga. App. 600, 732 S.E.2d 125 (2012).

Sufficient evidence supported the defendant's conviction for possession of cocaine with the intent to distribute because the jury could infer from a narcotics officer's expert opinion testimony that the defendant possessed the cocaine with the intent to distribute the cocaine, given the way the defendant concealed the drugs, the way the drugs were packaged for street sale, the amount of drugs on the defendant's person, and the fact that the defendant lacked a device for using the drugs. Moreover, the jury could infer that the defendant was selling drugs given that a citizen alerted the police to suspicious activity at the address where the defendant was found and because the defendant was lingering around a house that was not the defendant's home, late at night, in a high drug-sales area, without a credible explanation. Thomas v. State, 321 Ga. App. 214, 741 S.E.2d 298 (2013).

Appellate court refused to disturb the jury's verdict convicting defendant of possession of drugs with the intent to distribute because after hearing the evidence and having the opportunity to judge the credibility of the witnesses, the jury properly concluded that the only reasonable hypothesis was that defendant possessed the drugs found hidden in the kitchen, despite defendant's argument that others had equal access. King v. State, 755 S.E.2d 22, 2014 Ga. App. LEXIS 74 (2014).

Evidence sufficient to prove constructive, joint possession.

Evidence was sufficient to sustain the defendant's convictions for trafficking in cocaine, a violation of O.C.G.A. § 16-13-31(a)(1), and possession of ecstasy, a violation of O.C.G.A. § 16-13-30(a), although the defendant was neither in actual possession of the contraband nor in control of the vehicle where the contraband was found because there was slight evidence of access, power, and intention to exercise control or dominion over the contraband and, therefore, excluding every other reasonable hypothesis save that of the defendant's guilt, as required under former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6), the question of constructive, joint possession was within the jury's discretion. The ecstasy pills were found in a prescription pill bottle belonging to the defendant, and the pill bottle was found in a bag with the cocaine. Ferrell v. State, 312 Ga. App. 122, 717 S.E.2d 705 (2011).

Evidence was sufficient to establish constructive possession of crack cocaine because the defendant admitted during questioning that the cocaine in a passenger's shoe was the defendant's payment for driving, which constituted at least slight evidence indicating that the defendant had access, power, and intention to exercise dominion over the crack. Stokes v. State, 317 Ga. App. 435, 731 S.E.2d 118 (2012).

Evidence that the defendant and another shared the bedroom where the cocaine was found, that the defendant admitted the defendant was aware the roommate sold drugs, and that the defendant used drugs supported the defendant's conviction for possession of cocaine. Stacey v. State, 292 Ga. 838, 741 S.E.2d 881 (2013).

Since the defendant leased the apartment where the drugs were found, there was sufficient evidence for the jury to conclude that the defendant and the codefendant were in joint constructive possession of the cocaine and marijuana found there. Ahmed v. State, 322 Ga. App. 154, 744 S.E.2d 345 (2013).

Actual or constructive possession.

Jury was authorized to infer that a defendant had been in possession of the bag of cocaine found on the ground next to the garbage dumpster based on an officer's testimony that the officer saw the defendant walk over to the dumpster and bend down next to the dumpster, and that no other items were found in the area where the defendant had bent down. White v. State, 313 Ga. App. 605, 722 S.E.2d 198 (2012).

Sufficient evidence supported the defendant's conviction for possession of cocaine based on the evidence showing that the defendant ran from the back yard of a girlfriend's leased residence and had approximately 26 grams of cocaine on or near the defendant's person when apprehended on the front porch of the adjoining property by the police; thus, the evidence authorized the jury to infer that the defendant had either constructive or actual possession of the cocaine. Smith v. State, 323 Ga. App. 668, 747 S.E.2d 859 (2013).

Defendant's conviction for drug possession was upheld on appeal because there was sufficient evidence to support the defendant's conviction based on the defendant admitting to owning the safe where approximately 80 grams of marijuana were located. Franklin v. State, 325 Ga. App. 728, 754 S.E.2d 774 (2014).

Insufficient evidence supported defendant's conviction of possession of marijuana with intent to distribute. — There was insufficient evidence to support the defendant's conviction for possession of marijuana with the intent to distribute because the state merely proved that the defendant possessed marijuana and failed to produce any evidence that the defendant possessed scales or other drug-dealing paraphernalia or that large amounts of cash on the defendant's person

Possession (Cont'd)

or in the defendant's apartment were found. Beard v. State, 318 Ga. App. 128, 733 S.E.2d 426 (2012).

Conviction not precluded when defendant connected with contraband.

Evidence from defendant's live-in girlfriend that a lunch bag and shoe box containing marijuana and scales belonged to the defendant was sufficient to prove that the defendant had sole constructive possession of the marijuana in violation of O.C.G.A. § 16-13-30(j), although both the defendant and the girlfriend had equal access to the marijuana. Jefferson v. State, 309 Ga. App. 861, 711 S.E.2d 412 (2011).

State proved possession of marijuana.

Evidence supported the defendant's convictions of felony murder during the commission of aggravated assault, aggravated assault, possession of marijuana, and possession of a firearm during the commission of a crime since: (1) after smoking marijuana, the defendant attacked the victim, pulled a gun from the defendant's pocket, and shot the victim four times; (2) the victim told the police that the defendant did it; (3) the victim died; (4) a knife was found near the victim, the defendant had a stab wound and the defendant claimed self-defense; and (5) witnesses one and two saw the defendant pull the gun but did not see the victim with a knife. Hill v. State, 291 Ga. 160, 728 S.E.2d 225 (2012).

Sufficient evidence supported the defendant's conviction for possession of marijuana because the evidence showed that the defendant had marijuana in the defendant's possession when arrested. Smith v. State, 323 Ga. App. 668, 747 S.E.2d 859 (2013).

Possession of methamphetamine proven.

Evidence that the defendant had possession of the canister containing methamphetamine earlier on the day the defendant was arrested, the canister belonged to the defendant, and the defendant and a passenger had smoked methamphetamine from the canister a couple of hours before the officer found the canister was sufficient to support the defendant's conviction for methamphetamine possession under O.C.G.A. § 16-13-30(a). Mallard v. State, 321 Ga. App. 650, 742 S.E.2d 164 (2013).

Evidence sufficient to support conviction of sale and trafficking in methamphetamine. — Evidence that a defendant sold an undercover officer methamphetamine on two occasions, with one sale of more than 28 grams, and that the defendant participated in a later, larger drug deal, supported the defendant's convictions for trafficking in methamphetamine, O.C.G.A. § 16-13-31(e), and sale of methamphetamine under O.C.G.A. §§ 16-13-26(3)(B) and 16-13-30(b). Culajay v. State, 309 Ga. App. 631, 710 S.E.2d 846 (2011).

Evidence sufficient for conviction.

Since the defendant was the owner of the house where the ephedrine and pseudoephedrine were found, the defendant was presumed to have possessed all of the contents and, thus, there was sufficient evidence to support the defendant's possession conviction. Taylor v. State, 320 Ga. App. 596, 740 S.E.2d 327 (2013).

Evidence that the defendant's son spent most of the son's time in the downstairs of the defendant's house smoking marijuana and selling the marijuana to a regular stream of customers and that the defendant was not surprised when a safe in the son's bedroom was opened and drugs and paraphernalia were found there supported the defendant's conviction for possession of more than one ounce of marijuana. Kirchner v. State, 322 Ga. App. 275, 744 S.E.2d 802 (2013).

Evidence was sufficient to convict the defendant of trafficking in methamphetamine, possession of oxycodone and less than one ounce of marijuana, and driving while the defendant's license was suspended because the defendant knew the defendant's license to drive was suspended, and because the defendant knowingly had both the power and intention to exercise dominion or control over the controlled substances found in the backpack and was in constructive possession of those substances, as the defendant was driving the car in which the backpack was located, and the defendant was linked to

the backpack by the defendant's control of the car and evidence that the backpack contained a copy of a fake driver's license the defendant gave to an officer. Armstrong v. State, 325 Ga. App. 690, 754 S.E.2d 652 (2014).

Testimony from both of the arresting officers that the officers personally witnessed the defendant with what looked like crack cocaine rocks in the defendant's mouth and further testimony that the officers saw the defendant spit out some pieces of the suspected cocaine, which the officers retrieved and which later tested positive for cocaine, supported a conviction for possession of cocaine. Jordan v. State, 755 S.E.2d 882, 2014 Ga. App. LEXIS 123 (2014).

Intent to possess not found. — State failed to establish that a defendant knowingly possessed khat with the knowledge that it contained cathinone as the state's expert witness testified that cathinone converted into cathine, another chemical that the defendant was not charged with possessing, after some period of time and that cathinone was undetectable without the use of scientific testing equipment. Additionally, the evidence showed that the khat in the case was harvested more than two days before its subsequent arrival in Georgia, the defendant testified that the defendant believed the chemical "went out" of the khat after two days, and there was no evidence that the defendant made any attempt to conceal the nature of the package in which the khat was found by, for example, evading police or showing false identification. Mohamed v. State, 314 Ga. App. 181, 723 S.E.2d 694 (2012), cert. denied, No. S12C1038, 2012 Ga. LEXIS 616 (Ga. 2012).

Defendant was entitled to reversal of a conviction for possession of cathinone, a Schedule I substance, because the state failed to establish that the defendant knowingly possessed cathinone; a state crime lab chemist who tested the khat concluded that cathinone was not detectable by sight, although scientific testing revealed detectable amounts. Amin v. State, 317 Ga. App. 685, 732 S.E.2d 340 (2012).

Delivery and Distribution

Evidence sufficient to show intent to distribute cocaine. — Officer's opinion that the amount of cocaine in the defendant's possession was greater than that normally kept for personal use and was separately packaged for distribution authorized the jury to find that the defendant possessed the cocaine with intent to distribute. Horne v. State, 318 Ga. App. 484, 733 S.E.2d 487 (2012).

Evidence sufficient for conviction of selling cocaine.

Defendant's claim that the evidence was insufficient to support the defendant's convictions because the state relied on hearsay testimony of a forensic scientist who did not personally conduct the chemical tests failed because, even assuming the testimony was inadmissible, the state submitted sufficient evidence, including testimony from the police, the informant, and the defendant, establishing that the drugs recovered, with one exception, constituted cocaine. Cooper v. State, 324 Ga. App. 451, 751 S.E.2d 102 (2013).

Confidential informant working for law enforcement in an undercover operation purchased crack cocaine from the defendant on two separate occasions. Therefore, the evidence was clearly sufficient to allow the jury to convict the defendant of selling and possessing cocaine. McDougler v. State, 323 Ga. App. 828, 748 S.E.2d 475 (2013).

Evidence sufficient for conviction of possession of cocaine with intent to distribute.

Evidence was sufficient to support the defendants' conviction for possession of cocaine with intent to distribute and marijuana with intent to distribute because: (1) police officers, while executing a search of the defendants' home, found crack cocaine, marijuana, a large number of plastic baggies, digital scales which had cocaine residue on them, a police scanner, and a handgun; (2) one of the defendants told an officer that all of the narcotics belonged to that defendant; (3) a police lieutenant, who was accepted by the trial court as an expert in the field of street

Delivery and Distribution (Cont'd)

level narcotics, opined, based on the large number of packaging supplies that were found, the large amounts of marijuana and crack cocaine that were found, as well as the handgun and police scanner that were found, that the defendants possessed the crack cocaine and marijuana for the purpose of distributing the drugs; and (4) evidence of one defendant's prior arrest and conviction for possession of cocaine with intent to distribute was introduced as a similar transaction. Smith v. State, 309 Ga. App. 889, 714 S.E.2d 593 (2011).

Evidence supported finding of intent to distribute marijuana.

Evidence that a defendant participated in a plan for the delivery of a package containing 12 pounds of marijuana to a residence, along with digital scales, a marijuana grinder, and plastic baggies at the residence, and the defendant's admission that the marijuana was the defendant's, was sufficient to convict the defendant as a party to possession of marijuana with intent to distribute, trafficking in marijuana, and possession of marijuana, pursuant to O.C.G.A. § 16-2-20. Salinas v. State, 313 Ga. App. 720, 722 S.E.2d 432 (2012).

Evidence insufficient for conviction of possession with intent to distribute.

While the evidence was sufficient to convict the defendant of possession of cocaine found in a pill bottle in the defendant's vehicle, it was insufficient to prove that the defendant intended to distribute the cocaine under O.C.G.A. § 16-13-30(b) because the state produced no evidence that the defendant had scales, cutting implements, weapons, a large amount of cash, a customer list, or drug packaging materials; there was no evidence of prior convictions of drug possession with intent to distribute, no testimony that the defendant was seen selling or trying to sell drugs, no expert testimony that the amount of drugs seized was inconsistent with personal use, and no evidence as to the amount of cocaine seized. Under former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6), storing drugs in a pill bottle, and possessing an unidentified number of sales-size pieces of the drug, without more, equally supported the hypothesis that the person found with the drugs was a user rather than a dealer. Hicks v. State, 293 Ga. App. 830, 668 S.E.2d 474 (2008).

Evidence that the defendant kicked in a door and entered an occupied apartment with others, the defendant provided the guns used, the defendant placed a gun to one victim's head, a victim's wallet and key were taken, and marijuana, digital scales, and a device used to grind marijuana were found at the defendant's house was sufficient to support the defendant's convictions for four counts of aggravated assault, three counts of false imprisonment, and one count each of armed robbery, burglary, possession of marijuana with intent to distribute, and possession of a firearm during the commission of a felony. Thompson v. State, 320 Ga. App. 150, 739 S.E.2d 434 (2013).

Defendant was entitled to reversal of the convictions for possession with intent to distribute and trafficking drugs because the defendant was merely present at a residence, which the defendant did not own or lease, when a search warrant was executed, there was no evidence the defendant had actual or constructive possession of the drugs, and there was no evidence the defendant was a party to these crimes. Scott v. State, 2014 Ga. App. LEXIS 133 (Mar. 12, 2014).

Similar transaction evidence properly admitted.

Trial court did not abuse the court's discretion in admitting similar transaction evidence that the defendant had sold cocaine to a confidential informant because the trial court expressly found that the similar transaction was admissible for the purpose of showing the defendant's intent, that the defendant had committed the similar transaction, and that there was sufficient connection between the similar transaction and the charged offense, possession of cocaine with intent to distribute in violation of O.C.G.A. § 16-13-30(b). Wright v. State, 313 Ga. App. 829, 723 S.E.2d 59 (2012).

Trial court did not abuse its discretion in admitting similar transaction evidence because the evidence was sufficient for a rational trier of fact to have found the

defendant guilty beyond a reasonable doubt of possession of cocaine with intent to distribute, O.C.G.A. § 16-13-30(b), even without the similar transaction evidence; defendant testified on direct examination that the defendant was on parole at the time of a traffic stop and had previously pled guilty to a drug charge, and the trial court properly instructed the jury to limit the jury's consideration of the similar transaction evidence to the appropriate purpose. Wright v. State, 313 Ga. App. 829, 723 S.E.2d 59 (2012).

Conflicting descriptions of the defendant in officer's report.

Even though an officer had not been qualified as an expert at trial, the officer's testimony was admissible to prove that the substance found in the defendant's pickup truck was marijuana because at the time of the defendant's arrest, the officer who discovered the substance in the defendant's truck was certified to recognize the odor of marijuana and to identify and test marijuana, and the officer was subject to cross-examination by defense counsel; it was then for the jury to decide the weight and credibility the jury would give to the officer's testimony. Bass v. State, 309 Ga. App. 601, 710 S.E.2d 818 (2011).

Evidence sufficient to show sale of controlled pills. — Combined evidence established that the defendant actively participated in and was a party to the three separate sales of a controlled substance based on the defendant freely and voluntarily admitting that during the last controlled drug buy, the defendant supplied an informant with 500-600 pills, the pills tested positive for trifluoromethylphenyl piperazine, and that the defendant acted the same during all of the controlled purchases. Walker v. State, 323 Ga. App. 685, 747 S.E.2d 691 (2013).

Marijuana

Proof of weight. — To discharge the burden of proving that the weight of the marijuana exceeded one ounce, it is not necessary for the state to come forward with evidence of how many grams equal an ounce, even if the state's witnesses testify about the weight of the marijuana in terms of grams; when O.C.G.A. § 16-13-2(b) refers to an "ounce" of marijuana, the statute refers, as a matter of law, to an avoirdupois ounce, which is the equivalent of, when rounded up to the nearest hundredth of a gram, 28.35 grams, and the number of grams in an ounce is not something that varies from case to case or is open to reasonable dispute. Gaudlock v. State, 310 Ga. App. 149, 713 S.E.2d 399 (2011).

Sufficiency of evidence.

Even though an officer had not been qualified as an expert at trial, the officer's testimony was admissible to prove that the substance found in the defendant's pickup truck was marijuana because at the time of the defendant's arrest, the officer who discovered the substance in the defendant's truck was certified to recognize the odor of marijuana and to identify and test marijuana, and the officer was subject to cross-examination by defense counsel; it was then for the jury to decide the weight and credibility the jury would give to the officer's testimony. Bass v. State, 309 Ga. App. 601, 710 S.E.2d 818 (2011).

Evidence was sufficient to sustain the defendant's conviction for possession of more than one ounce of marijuana in violation of O.C.G.A. §§ 16-13-2(b) and 16-13-30(j) because the state adduced evidence at trial that defendant had possession of 28.8 grams of marijuana, which was, by definition, more than one ounce of marijuana. Gaudlock v. State, 310 Ga. App. 149, 713 S.E.2d 399 (2011).

Evidence was sufficient to enable a rational trier of fact to find the defendant guilty beyond a reasonable doubt of malice murder, felony murder while in the commission of armed robbery, armed robbery, and conspiracy to violate the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., through a violation of O.C.G.A. § 16-13-30(j)(1), because: (1) the defendant and another buyer met with the victim and another seller where the defendant and the other buyer inspected marijuana which the victim and the other seller had for sale; (2) after some discussion about price, the victim told the defendant what the price was and that the defendant could take it or leave it; (3) the defendant said that the defendant would

Marijuana (Cont'd)

take it, pulled a gun from the defendant's waistband, and fatally shot the victim; and (4) there was conflicting testimony as to whether the defendant took the marijuana and ran away with the marijuana after shooting the victim. Darville v. State, 289 Ga. 698, 715 S.E.2d 110 (2011).

Trial court did not err in denying the defendant's motion for a directed verdict because the evidence was sufficient for a rational trier of fact to find the defendant guilty beyond a reasonable doubt of distribution of marijuana, O.C.G.A. § 16-13-30(j), and possession of a firearm during the commission of a felony, O.C.G.A. § 16-11-106(b)(4); the testimony of a party to the transaction was corroborated by the observations of the detectives, the marijuana taken into evidence, the written statements of the parties regarding the defendant's involvement, and the defendant's own statement to a detective. Arnett v. State, 311 Ga. App. 811, 717 S.E.2d 312 (2011).

When the police discovered marijuana as the result of an illegal arrest, evidence was insufficient to support the defendant's conviction for possessing less than one ounce of marijuana. Ewumi v. State, 315 Ga. App. 656, 727 S.E.2d 257 (2012).

There was sufficient evidence to support the defendant's conviction for felony possession of marijuana based on the parties' stipulation that the marijuana in question in the case was scientifically determined to be marijuana and that it weighed 29.3 grams and the testimony of an officer that the officer saw the defendant trying to hide the marijuana, that the defendant asked for mercy, and the officer identified the marijuana and the bag as the one the officer recovered from the defendant's car during the traffic stop. Davis v. State, 318 Ga. App. 166, 733 S.E.2d 453 (2012).

Evidence that the defendant lived at the residence where the drugs were found gave rise to a rebuttable presumption that the defendant possessed the contraband and supported the defendant's convictions of possession with intent to distribute and possession of more than one ounce of marijuana. Evans v. State, 318 Ga. App. 706, 734 S.E.2d 527 (2012).

Evidence there was a path between the closest residence and the marijuana plants; one of the tires on the vehicle the defendant drove was the same as the tire the plants were grown in; the defendant had a relationship with the owner of the house near which the plants were found; the owner denied knowing marijuana was growing there; and the defendant's car contained rolling papers, fertilizer, and a book about marijuana authorized the jury to find the defendant guilty of manufacturing marijuana. Ross v. State, 323 Ga. App. 28, 747 S.E.2d 81 (2013).

Constructive possession.

Trial court did not err in convicting the defendants of felony possession of more than one ounce of marijuana in violation of O.C.G.A. § 16-13-30(j)(1) because the trial court was authorized to conclude that the defendants had equal access to and joint constructive possession of the marijuana that was found in a minivan and that the defendants participated as parties to the drug possession offense; the defendants, who were passengers in the back of the minivan, knew that marijuana was inside the minivan, and the driver informed an officer that the passengers were hiding marijuana inside the minivan. Dennis v. State, 313 Ga. App. 595, 722 S.E.2d 190 (2012).

Evidence sufficient for conviction. — Evidence was sufficient to support the defendant's conviction for possession with intent to distribute marijuana because the defendant was in possession of clear, plastic baggies, smaller baggies of suspected marijuana, a digital scale, and cash, and a police officer testified that in the officer's capacity as a marijuana tester for the county sheriff's office, the officer tested a total of 11 bags, containing approximately 190 grams of a substance that tested positive for marijuana; possession of a scale, baggies, and large amounts of currency along with drugs can constitute circumstantial evidence of intent to distribute. Hardaway v. State, 309 Ga. App. 432, 710 S.E.2d 634 (2011).

Evidence was sufficient to permit a rational trier of fact to find the defendant guilty beyond a reasonable doubt of possession of cocaine with intent to distribute because a chemist testified that in the

chemist's opinion, the substance found in the defendant's pocket consisted of cocaine; a drug task force officer testified about a field test indicating the presence of cocaine. White v. State, 310 Ga. App. 386, 714 S.E.2d 31 (2011).

Trial court did not err in denying the defendant's motion for a directed verdict of acquittal as to the charge of possession of methamphetamine because the trier of fact was presented with sufficient evidence to determine beyond a reasonable doubt that the defendant was guilty of possessing methamphetamine since the court was authorized to conclude that the defendant either dropped or discarded the methamphetamine during the struggle with police when the defendant fled from a traffic stop; the evidence included the officer's testimony that the officer saw the defendant tuck something into a waistband while in a car, the defendant's flight from law enforcement after being stopped for a minor traffic offense, the proximity of the methamphetamine to the location where the defendant fell to the ground, and the defendant's statement to the officer that the defendant had exchanged drugs for use of the car. Bone v. State, 311 Ga. App. 390, 715 S.E.2d 789 (2011).

Evidence was sufficient to authorize the defendant's conviction for possessing more than one ounce of marijuana because the defendant was presumed to have exclusive possession and control of the marijuana that a police officer found in the car the defendant was driving; as the factfinder, the jury was entitled to reject the testimony of the defendant's friend that the marijuana was the friend's and to determine that the presumption of the defendant's possession of the marijuana had not been rebutted. Nix v. State, 312 Ga. App. 43, 717 S.E.2d 550 (2011).

Defendant's convictions for possession of marijuana and a firearm were affirmed because, although circumstantial, the evidence was sufficient to show that the weapon was within arm's reach of the defendant during the commission of a crime. Under the circumstances, the trial court could find that, given the close proximity, the defendant passed within reach of the handgun while handling the marijuana. Carter v. State, 319 Ga. App. 609, 737 S.E.2d 714 (2013).

Combined evidence was sufficient to enable a rational trier of fact to find the defendant guilty beyond a reasonable doubt of possession of marijuana with intent to distribute because the owner of the residence where the police found drugs and drug paraphernalia testified that the defendant brought marijuana to the residence along with digital scales and assisted in picking the stems out of the marijuana; the testimony of a witness who saw the defendant where the marijuana, scales, and marijuana stems were located in plain view and the testimony of the deputies who participated in the execution of the search warrant served to corroborate the owner's testimony. Kegler v. State, 317 Ga. App. 427, 731 S.E.2d 111 (2012).

Evidence was sufficient to establish that the defendant possessed marijuana with intent to distribute under a conspiracy theory because the defendant admitted to agreeing to drive a passenger to pick up the marijuana in exchange for the crack cocaine, which demonstrated an agreement between the defendant and the passenger; both the defendant and the passenger committed acts in furtherance of the agreement because the defendant drove the passenger to pick up the marijuana, and the passenger acquired the marijuana. Stokes v. State, 317 Ga. App. 435, 731 S.E.2d 118 (2012).

Evidence sufficient to sustain conviction for possession with intent to distribute marijuana.

Evidence was sufficient to find the defendant guilty of possession of marijuana with intent to distribute, O.C.G.A. § 16-13-30(j)(1), and possession of marijuana with intent to distribute within 1,000 feet of a housing project, O.C.G.A. § 16-13-32.5(b), because it appeared that the jury accepted that version of the events most unfavorable to the defendant after hearing all of the evidence and resolving the credibility of all of the witnesses, and the jury was solely authorized to make such determinations. Bass v. State, 309 Ga. App. 601, 710 S.E.2d 818 (2011).

Evidence was sufficient to support the defendant's conviction for possession with intent to distribute marijuana as over a

Marijuana (Cont'd)

pound of marijuana was found in the defendant's vehicle, and the marijuana was found with a trafficking amount of 3,4 methylenedioxymethamphetamine (MDMA) and a loaded weapon, constituting evidence of involvement in the drug trade. Jackson v. State, 314 Ga. App. 272, 724 S.E.2d 9 (2012).

Evidence that the defendant was in possession of the marijuana during a pat-down search prior to being transported in the patrol car, but the pat-down failed to discover the marijuana on the defendant's person, that the defendant placed the marijuana under the backseat while being transported, and the marijuana found in the backseat was packaged in seven individual bags supported a conviction for possession with intent to distribute. Wiggins v. State, 323 Ga. App. 754, 748 S.E.2d 120 (2013).

Confrontation clause violation was harmless error in light of other evidence of marijuana. — Although a trial court erred in excluding evidence that a witness had pending unrelated drug charges, violating the defendant's right to confrontation, the error was harmless given the overwhelming evidence of the defendant's possession of marijuana, scales, and plastic bags in a car the defendant had rented and was driving. Shelton v. State, 323 Ga. App. 798, 748 S.E.2d 278 (2013).

Jury instructions. — Trial court's instructions on "mere association" and "mere presence" with regard to charging a defendant as a party to a crime under O.C.G.A. § 16-2-20(a) were misstatements of the law and also directly conflicted with other closely related instructions, and were harmful error requiring reversal of the defendant's convictions for possession of marijuana with intent to distribute in violation of O.C.G.A. § 16-13-30(j)(1). Able v. State, 312 Ga. App. 252, 718 S.E.2d 96 (2011).

Marijuana conviction not aggravated felony under Immigration and Nationality Act. — Because petitioner alien's O.C.G.A. § 16-13-30(j)(1) conviction for marijuana distribution failed to establish that it involved either remuneration or more than a small amount of marijuana, it was not an aggravated felony under the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq. Moncrieffe v. Holder, No. 11-702, 2013 U.S. LEXIS 3313 (2013).

16-13-30.3. Possession of substances containing ephedrine, pseudoephedrine, and phenylpropanolamine; restrictions on sales of products containing pseudoephedrine.

JUDICIAL DECISIONS

Lesser included offense to trafficking. — Crimes set forth in O.C.G.A. §§ 16-13-30.3(b)(2) and 16-13-32.2, with regard to possessing objects or materials of any kind for the purpose of manufacturing or preparing a controlled substance, are lesser included offenses of the crime of trafficking by manufacture of methamphetamine under O.C.G.A. § 16-13-31(f). Franks v. State, 745 S.E.2d 666, No. A13A0932, 2013 Ga. App. LEXIS 533 (2013).

Because the possession of pseudoephedrine and possession of a drug-related object required proof of elements not required for the crime of trafficking, those crimes were not lesser included offenses of the crime of trafficking in methamphetamine as indicted, and the trial court did not err in denying the second defendant's requested charges on lesser included offenses. Franks v. State, 325 Ga. App. 488, 2013 Ga. App. LEXIS 1008 (2013).

Failure to instruct jury on lesser included offenses reversible error. — Defendant's conviction for attempted trafficking by manufacturing methamphetamine was reversed because the evidence was not overwhelming as to the charge of trafficking, thus, it could not be said that it was harmless error for the trial court to

refuse to instruct the jury on the lesser included offenses requested by the defendant. Franks v. State, 745 S.E.2d 666, No. A13A0932, 2013 Ga. App. LEXIS 533 (2013).

16-13-30.5. Possession of substances with intent to use or convey such substances for the manufacture of Schedule I or Schedule II controlled substances.

JUDICIAL DECISIONS

Evidence insufficient to support conviction. — Defendant's conviction for use or conveyance of certain substances used in the manufacture of controlled substances was reversed, because all of the items listed in indictment were found in the common areas of the house, and there was no evidence that the defendant possessed them or had a present intent to convey them to the defendant's mother or stepfather. Hutchins v. State, 2014 Ga. App. LEXIS 164 (Mar. 14, 2014).

16-13-31. Trafficking in cocaine, illegal drugs, marijuana, or methamphetamine; penalties.

(a)(1) Any person who sells, manufactures, delivers, or brings into this state or who is in possession of 28 grams or more of cocaine or of any mixture with a purity of 10 percent or more of cocaine, as described in Schedule II, in violation of this article commits the felony offense of trafficking in cocaine and, upon conviction thereof, shall be punished as follows:

(A) If the quantity of the cocaine or the mixture involved is 28 grams or more, but less than 200 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of ten years and shall pay a fine of $200,000.00;

(B) If the quantity of the cocaine or the mixture involved is 200 grams or more, but less than 400 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall pay a fine of $300,000.00; and

(C) If the quantity of the cocaine or the mixture involved is 400 grams or more, the person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall pay a fine of $1 million.

(2) Any person who sells, manufactures, delivers, or brings into this state or who is in possession of any mixture with a purity of less than 10 percent of cocaine, as described in Schedule II, in violation of this article commits the felony offense of trafficking in cocaine if the total weight of the mixture multiplied by the percentage of cocaine contained in the mixture exceeds any of the quantities of cocaine specified in paragraph (1) of this subsection. Upon conviction thereof, such person shall be punished as provided in paragraph (1) of this

subsection depending upon the quantity of cocaine such person is charged with selling, manufacturing, delivering, or bringing into this state or possessing.

(b) Any person who sells, manufactures, delivers, brings into this state, or has possession of four grams or more of any morphine or opium or any salt, isomer, or salt of an isomer thereof, including heroin, as described in Schedules I and II, or four grams or more of any mixture containing any such substance in violation of this article commits the felony offense of trafficking in illegal drugs and, upon conviction thereof, shall be punished as follows:

(1) If the quantity of such substances involved is four grams or more, but less than 14 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of five years and shall pay a fine of $50,000.00;

(2) If the quantity of such substances involved is 14 grams or more, but less than 28 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of ten years and shall pay a fine of $100,000.00; and

(3) If the quantity of such substances involved is 28 grams or more, the person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall pay a fine of $500,000.00.

(c) Any person who sells, manufactures, grows, delivers, brings into this state, or has possession of a quantity of marijuana exceeding ten pounds commits the offense of trafficking in marijuana and, upon conviction thereof, shall be punished as follows:

(1) If the quantity of marijuana involved is in excess of ten pounds, but less than 2,000 pounds, the person shall be sentenced to a mandatory minimum term of imprisonment of five years and shall pay a fine of $100,000.00;

(2) If the quantity of marijuana involved is 2,000 pounds or more, but less than 10,000 pounds, the person shall be sentenced to a mandatory minimum term of imprisonment of seven years and shall pay a fine of $250,000.00; and

(3) If the quantity of marijuana involved is 10,000 pounds or more, the person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall pay a fine of $1 million.

(d) Any person who sells, manufactures, delivers, or brings into this state 200 grams or more of methaqualone or of any mixture containing methaqualone, as described in paragraph (6) of Code Section 16-13-25, in violation of this article commits the felony offense of trafficking in methaqualone and, upon conviction thereof, shall be punished as follows:

(1) If the quantity of the methaqualone or the mixture involved is 200 grams or more, but less than 400 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of five years and shall pay a fine of $50,000.00; and

(2) If the quantity of the methaqualone or the mixture involved is 400 grams or more, the person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall pay a fine of $250,000.00.

(e) Any person who sells, delivers, or brings into this state or has possession of 28 grams or more of methamphetamine, amphetamine, or any mixture containing either methamphetamine or amphetamine, as described in Schedule II, in violation of this article commits the felony offense of trafficking in methamphetamine or amphetamine and, upon conviction thereof, shall be punished as follows:

(1) If the quantity of methamphetamine, amphetamine, or a mixture containing either substance involved is 28 grams or more, but less than 200 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of ten years and shall pay a fine of $200,000.00;

(2) If the quantity of methamphetamine, amphetamine, or a mixture containing either substance involved is 200 grams or more, but less than 400 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall pay a fine of $300,000.00; and

(3) If the quantity of methamphetamine, amphetamine, or a mixture containing either substance involved is 400 grams or more, the person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall pay a fine of $1 million.

(f) Any person who manufactures methamphetamine, amphetamine, or any mixture containing either methamphetamine or amphetamine, as described in Schedule II, in violation of this article commits the felony offense of trafficking methamphetamine or amphetamine and, upon conviction thereof, shall be punished as follows:

(1) If the quantity of methamphetamine, amphetamine, or a mixture containing either substance involved is less than 200 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of ten years and shall pay a fine of $200,000.00;

(2) If the quantity of methamphetamine, amphetamine, or a mixture containing either substance involved is 200 grams or more, but less than 400 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall pay a fine of $300,000.00; and

(3) If the quantity of methamphetamine, amphetamine, or a mixture containing either substance involved is 400 grams or more, the person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall pay a fine of $1 million.

(g)(1) The district attorney may move the sentencing court to impose a reduced or suspended sentence upon any person who is convicted of a violation of this Code section who provides substantial assistance in the identification, arrest, or conviction of any of his or her accomplices, accessories, coconspirators, or principals. Upon good cause shown, the motion may be filed and heard in camera. The judge hearing the motion may impose a reduced or suspended sentence if he or she finds that the defendant has rendered such substantial assistance.

(2)(A) In the court's discretion, the judge may depart from the mandatory minimum sentence specified for a person who is convicted of a violation of this Code section as set forth in subparagraph (B) of this paragraph if the judge concludes that:

(i) The defendant was not a leader of the criminal conduct;

(ii) The defendant did not possess or use a firearm, dangerous weapon, or hazardous object during the crime;

(iii) The criminal conduct did not result in a death or serious bodily injury to a person other than to a person who is a party to the crime;

(iv) The defendant has no prior felony conviction; and

(v) The interests of justice will not be served by the imposition of the prescribed mandatory minimum sentence.

(B) The sentencing departure ranges pursuant to subparagraph (A) of this paragraph shall be as follows:

(i) Any person convicted of violating paragraph (1) of subsection (b) or (d) of this Code section, two years and six months to five years imprisonment and a fine of not less than $25,000.00 nor more than $50,000.00;

(ii) Any person convicted of violating paragraph (1) of subsection (c) of this Code section, two years and six months to five years imprisonment and a fine of not less than $50,000.00 nor more than $100,000.00;

(iii) Any person convicted of violating paragraph (2) of subsection (c) of this Code section, three years and six months to seven years imprisonment and a fine of not less than $125,000.00 nor more than $250,000.00;

(iv) Any person convicted of violating subparagraph (a)(1)(A), paragraph (2) of subsection (a), relating to the quantity of drugs specified in subparagraph (a)(1)(A) of this Code section, or paragraph (1) of subsection (e) or (f) of this Code section, five to ten years imprisonment and a fine of not less than $100,000.00 nor more than $200,000.00;

(v) Any person convicted of violating paragraph (2) of subsection (b) of this Code section, five to ten years imprisonment and a fine of not less than $50,000.00 nor more than $100,000.00;

(vi) Any person convicted of violating subparagraph (a)(1)(B), paragraph (2) of subsection (a), relating to the quantity of drugs specified in subparagraph (a)(1)(B) of this Code section, or paragraph (2) of subsection (e) or (f) of this Code section, seven years and six months to 15 years imprisonment and a fine of not less than $150,000.00 nor more than $300,000.00;

(vii) Any person convicted of violating paragraph (3) of subsection (c) of this Code section, seven years and six months to 15 years imprisonment and a fine of not less than $500,000.00 nor more than $1 million;

(viii) Any person convicted of violating paragraph (2) of subsection (d) of this Code section, seven years and six months to 15 years imprisonment and a fine of not less than $125,000.00 nor more than $250,000.00;

(ix) Any person convicted of violating paragraph (3) of subsection (b) of this Code section, 12 years and six months to 25 years imprisonment and a fine of not less than $250,000.00 nor more than $500,000.00; and

(x) Any person convicted of violating subparagraph (a)(1)(C), paragraph (2) of subsection (a), relating to the quantity of drugs specified in subparagraph (a)(1)(C) of this Code section, or paragraph (3) of subsection (e) or (f) of this Code section, 12 years and six months to 25 years imprisonment and a fine of not less than $500,000.00 nor more than $1 million.

(C) If a judge reduces the mandatory minimum sentence pursuant to this paragraph, the judge shall specify on the record the circumstances for the reduction and the interests served by such departure. Any such order shall be appealable by the State of Georgia pursuant to Code Section 5-7-1.

(D) As used in this paragraph, the term:

(i) "Dangerous weapon" shall have the same meaning as set forth in Code Section 16-11-121.

(ii) "Firearm'" shall have the same meaning as set forth in Code Section 16-11-127.1.

(iii) "Hazardous object" shall have the same meaning as set forth in Code Section 20-2-751.

(iv) "Leader" means a person who planned and organized others and acted as a guiding force in order to achieve a common goal.

(3) In the court's discretion, the judge may depart from the mandatory minimum sentence specified in this Code section for a person who is convicted of a violation of this Code section when the prosecuting attorney and the defendant have agreed to a sentence that is below such mandatory minimum.

(h) Any person who violates any provision of this Code section shall be punished as provided for in the applicable mandatory minimum punishment and for not more than 30 years of imprisonment and by a fine not to exceed $1 million.

(i) Notwithstanding Code Section 16-13-2, any sentence imposed pursuant to subsection (g) of this Code section shall not be reduced by any earned time, early release, work release, leave, or other sentence-reducing measures under programs administered by the Department of Corrections, the effect of which would be to reduce the period of incarceration ordered by the sentencing court or any form of pardon, parole, or commutation of sentence by the State Board of Pardons and Paroles; provided, however, that during the final year of incarceration, a defendant so sentenced shall be eligible to be considered for participation in a Department of Corrections administered transitional center or work release program. (Ga. L. 1980, p. 432, § 1; Ga. L. 1982, p. 3, § 16; Ga. L. 1982, p. 2215, § 1; Ga. L. 1983, p. 620, § 1; Ga. L. 1985, p. 149, § 16; Ga. L. 1985, p. 552, § 1; Ga. L. 1986, p. 10, § 16; Ga. L. 1986, p. 397, § 1; Ga. L. 1988, p. 420, § 2; Ga. L. 1989, p. 1594, § 1; Ga. L. 1992, p. 2106, § 1; Ga. L. 1994, p. 169, § 5.1; Ga. L. 1997, p. 1311, § 5; Ga. L. 2003, p. 177, § 4; Ga. L. 2003, p. 257, § 1; Ga. L. 2012, p. 899, § 3-8/HB 1176; Ga. L. 2013, p. 222, § 4/HB 349; Ga. L. 2014, p. 432, § 2-8/HB 826; Ga. L. 2014, p. 780, § 2-2/SB 364.)

The 2012 amendment, effective July 1, 2012, substituted the present provisions of subsection (h) for the former provisions, which read: "Any person who violates any provision of this Code section in regard to trafficking in cocaine, illegal drugs, marijuana, or methamphetamine shall be punished by imprisonment for not less than five years nor more than 30 years and by a fine not to exceed $1 million." See editor's note for applicability.

The 2013 amendment, effective July 1, 2013, deleted "knowingly" throughout this Code section; in subsection (b), substituted "four grams" for "4 grams" twice in the introductory paragraph and in paragraph (b)(1); in subsection (c), substituted "ten pounds" for "10 pounds" in the

introductory paragraph and in paragraph (c)(1); deleted former paragraph (g)(1), which read: "Except as provided in paragraph (2) of this subsection and notwithstanding Code Section 16-13-2, with respect to any person who is found to have violated this Code section, adjudication of guilt or imposition of sentence shall not be suspended, probated, deferred, or withheld prior to serving the mandatory minimum term of imprisonment prescribed by this Code section."; redesignated former paragraph (g)(2) as present paragraph (g)(1); in paragraph (g)(1), inserted "or her" near the end of the first sentence and inserted "or she" in the second sentence; and added subparagraphs (g)(2)(A) through (g)(2)(D), paragraph (g)(3), and subsections (h) and (i). See editor's note for applicability.

The 2014 amendments. — The first 2014 amendment, effective July 1, 2014, in division (g)(2)(A)(ii), inserted "firearm, dangerous" and inserted ", or hazardous object"; in subparagraph (g)(2)(D), added divisions (g)(2)(D)(i) through (g)(2)(D)(iii), redesignated former division (g)(2)(D)(i) as present division (g)(2)(D)(iv), and deleted former division (g)(2)(D)(ii), which read: "'Weapon' shall have the same meaning as set forth in Code Section 16-11-127.1." The second 2014 amendment, effective April 28, 2014, inserted "subsection (g) of" near the beginning of subsection (i).

Editor's notes. — Ga. L. 2012, p. 899, § 9-1(a)/HB 1176, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2012, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2012, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act."

Ga. L. 2013, p. 222, § 21/HB 349, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2013, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2013, shall be governed by the statute in effect at the time of such offense."

Ga. L. 2014, p. 780, § 5-1/SB 364, not codified by the General Assembly, provides, in part, that this Act shall apply to any sentence imposed on or after July 1, 2013.

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012). For article, "Appeal and Error: Appeal or Certiorari by State in Criminal Cases," see 30 Ga. St. U.L. Rev. 17 (2013).

JUDICIAL DECISIONS

Analysis

General Consideration

No fatal variance between "methamphetamine" and "mixture containing methamphetamine". — Because "methamphetamine" and a "mixture containing methamphetamine" are synonymous for purposes of O.C.G.A. § 16-13-31(e), there was no fatal variance between the delinquency petition charging delivery of a certain amount of methamphetamine and the proof at the hearing showing delivery of that amount of a mixture containing methamphetamine. In the Interest of S. C. P., 320 Ga. App. 166, 739 S.E.2d 474 (2013).

Evidence sufficient to defeat motion for acquittal.

Denial of the defendant's motion for acquittal was supported by evidence that the defendant stated the defendant had

General Consideration (Cont'd)

three ounces of methamphetamine about two hours before the drug transaction, that amount was found in the vehicle, and the defendant provided methamphetamine to an individual who sold the methamphetamine to the confidential informant. Osorio v. State, 323 Ga. App. 843, 748 S.E.2d 483 (2013).

Charge on entire definition of trafficking not error. — Trial court did not commit plain error by charging the jury on the entire definition of trafficking as no evidence was introduced at trial suggesting that the defendant brought the cocaine at issue into the state, sold the cocaine, or that the defendant delivered the cocaine to anyone; rather, the evidence showed only that the defendant was in knowing possession of the cocaine for a brief period of time; thus, there was no reasonable possibility that the jury convicted the defendant of trafficking in a manner not charged in the indictment. Hernandez-Garcia v. State, 322 Ga. App. 455, 745 S.E.2d 706 (2013).

Jury question answered incorrectly. — Although the evidence was sufficient to support the defendant's conviction for trafficking in cocaine, in violation of O.C.G.A. § 16-13-31(a)(1), the trial court's erroneous response to a jury question regarding the knowledge requirement may have resulted in an improper verdict; such error might have led the jury to incorrectly substitute criminal negligence for the knowledge requirement when the jury rendered the jury's verdict. McGee v. State, 316 Ga. App. 661, 730 S.E.2d 131 (2012).

Suppression motion properly denied.

Trial court did not err in denying the defendant's motion to suppress the cocaine that was discovered during a search of the rental vehicle the defendant was driving based on evidence from the officer that the defendant consented to the search, although the defendant testified that the defendant did not consent and that the officer just announced that the officer was going to search. Morgan v. State, 311 Ga. App. 740, 716 S.E.2d 821 (2011).

With regard to the defendant's conviction for trafficking in cocaine, the trial court did not err in denying the defendant's motion to suppress the cocaine found on the bus the defendant was driving because the consent to search was obtained approximately 10 minutes after the stop and a prolonged traffic stop was justified based on the information the deputy learned during the course of the traffic stop, such as the inconsistencies in the defendant's statements and the log book. Rocha v. State, 317 Ga. App. 863, 733 S.E.2d 38 (2012).

Trial court properly denied the defendant's motion to suppress the cocaine evidence found in the defendant's vehicle after a warrantless search because the fact that the officer detected the odor of marijuana emitting from the defendant's car provided probable cause to believe that the car contained drug contraband, which authorized the search of the car. Jones v. State, 319 Ga. App. 678, 738 S.E.2d 130 (2013).

Cited in Foster v. State, 314 Ga. App. 642, 725 S.E.2d 777 (2012); Smith v. State, 323 Ga. App. 668, 747 S.E.2d 859 (2013).

Possession

Jury instructions on possession were sufficient. — Defendant's conviction for trafficking in methamphetamine was affirmed because the trial court instructed the jury on sole and joint possession, actual and constructive possession, mere presence at the scene of the commission of a crime and mere association with persons involved in the commission of a crime, thus fairly instructing the jury regarding defendant's defense. Palencia-Barron v. State, 318 Ga. App. 301, 733 S.E.2d 824 (2012).

Evidence sufficient to prove constructive, joint possession.

Because the defendant's brother was prosecuted in federal court for possession of a cocaine mixture in an apartment, the state was permitted to prove the state's case against the defendant by proof of joint constructive possession; the state did not prosecute the brother for the brother's joint constructive possession of the cocaine mixture in the apartment, but the United States did prosecute the brother in

federal court. Holiman v. State, 313 Ga. App. 76, 720 S.E.2d 363 (2011).

Use of similar transaction evidence in drug possession case. — With regard to the defendant's convictions for trafficking in cocaine and possession of a drug related object, the trial court did not abuse the court's discretion by allowing the state to introduce evidence of the defendant's 2003 drug possession incident because both incidents involved the possession and concealment of cocaine and, during both incidents, the defendant described the process by which the drugs were obtained. Stover v. State, 322 Ga. App. 142, 744 S.E.2d 119 (2013).

Driver of automobile as possessor. Defendant failed to rebut the presumption of possession of bricks of cocaine found in the defendant's pickup truck following a road block stop because the defendant claimed that the truck was the defendant's, the defendant asserted ownership over the contents of the truck, the defendant was the sole occupant of the truck, and there was no showing that others had access to the truck bed. Maldonado v. State, 313 Ga. App. 511, 722 S.E.2d 123 (2012).

Evidence of possession insufficient. — Trial court erred in convicting the defendant of trafficking in cocaine, O.C.G.A. § 16-13-31(a)(1), trafficking in methamphetamine, § 16-13-31(e), and possession of a firearm during the commission of a felony, O.C.G.A. § 16-11-106(a)(5), because the state failed to prove any connection between the defendant and the contraband other than spatial proximity; no drugs were found on the defendant's person, and the defendant was not seen in proximity to the well-hidden drugs. Cobarrubias-Garcia v. State, 316 Ga. App. 787, 730 S.E.2d 455 (2012).

Quantity of Contraband

Defendant's knowledge of quantity. Trial court's instruction requiring the jury to find that a defendant who was charged with trafficking in cocaine in violation of O.C.G.A. § 16-13-31(a)(1) was required to have knowingly possessed 28 grams of cocaine or more sufficiently charged that the jury had to find that the defendant was aware of the weight of the cocaine the defendant possessed. Further, any error in the charge was harmless, because the defendant was shown to have possessed 106 grams of cocaine and to have been familiar with the weight of cocaine from the defendant's past dealings with cocaine. Harrison v. State, 309 Ga. App. 454, 711 S.E.2d 35 (2011).

Evidence that the defendant took delivery of a large package of marijuana from an investigator dressed as a postal worker, that the defendant said the defendant was expecting the package and signed for the package using a false name and then took possession of the package was sufficient to support the defendant's conviction for trafficking in marijuana in violation of O.C.G.A. § 16-13-31(c). Defendant's knowledge of the precise weight of the drugs in the defendant's possession was not required to sustain the defendant's drug trafficking conviction, and the trial court did not err in so instructing the jury. Wilson v. State, 312 Ga. App. 166, 718 S.E.2d 31 (2011), aff'd, 291 Ga. 458, 729 S.E.2d 364 (2012).

Even if the trial court erred in instructing the jury that knowledge of the weight of the marijuana possessed by the defendant was not required for a conviction of trafficking under O.C.G.A. § 16-13-31(c), because the issue was subject to reasonable dispute, it did not amount to plain error under O.C.G.A. § 17-8-58(b). Wilson v. State, 291 Ga. 458, 729 S.E.2d 364 (2012).

Sufficiency of Evidence

Defendant was properly convicted for trafficking in marijuana, etc. Evidence that a defendant participated in a plan for the delivery of a package containing 12 pounds of marijuana to a residence, along with digital scales, a marijuana grinder, and plastic baggies at the residence, and the defendant's admission that the marijuana was the defendant's, was sufficient to convict the defendant as a party to possession of marijuana with intent to distribute, trafficking in marijuana, and possession of marijuana, pursuant to O.C.G.A. § 16-2-20. Salinas v. State, 313 Ga. App. 720, 722 S.E.2d 432 (2012).

Defendant's conviction for trafficking in

Sufficiency of Evidence (Cont'd)

marijuana in violation of O.C.G.A. § 16-13-31(c)(1) was affirmed because there was sufficient evidence to corroborate the accomplice's testimony regarding the defendant's involvement. Evidence corroborated the accomplice's testimony that the accomplice and the defendant planned to switch vehicles after taking delivery of the crate. Watt v. State, 317 Ga. App. 551, 732 S.E.2d 96 (2012).

Conspiracy to traffic in drugs.

Evidence was sufficient to sustain the defendant's conviction for conspiracy to traffic methamphetamine over 400 grams in violation of O.C.G.A. §§ 16-4-8 and 16-13-31(e)(3) because an accomplice testified that the defendant supplied the accomplice with several pounds of methamphetamine, and that testimony was amply corroborated by other evidence in the record; the defendant's translator testified that the translator retrieved $15,000 from the accomplice as payment for fronted methamphetamine, police officers recovered $15,000 in cash from the translator upon leaving the accomplice's residence, and there were recorded conversations between the accomplice, the defendant, and the translator in which they discussed methamphetamine transactions. Melesa v. State, 314 Ga. App. 306, 724 S.E.2d 30 (2012).

Because the state failed to prove the essential element of an agreement between the defendant and the occupants of a stash house in a drug conspiracy trial, since the only evidence was that a purchase of drugs was to take place, the defendant's conviction for conspiracy to traffic in cocaine under O.C.G.A. §§ 16-4-8 and 16-13-31(a)(1) was reversed. Griffin v. State, 294 Ga. 325, 751 S.E.2d 773 (2013).

Evidence sufficient for attempt to traffic.

Sufficient evidence supported the defendant's conviction for criminal attempt to commit trafficking in cocaine based on the trial evidence establishing that the defendant negotiated for and attempted to purchase one kilogram of cocaine from an undercover investigator, that the defendant took substantial steps and actively participated in the attempted drug offense by meeting with the undercover investigator at the designated location and at the arranged time for the purpose of conducting the transaction and by executing the bill of sale for a vehicle in exchange for the drug purchase, and by taking possession of the package of cocaine and cutting the package open to examine the contents. Tehrani v. State, 321 Ga. App. 685, 742 S.E.2d 502 (2013).

Sufficient evidence existed to support the defendant's conviction for attempted trafficking by manufacturing methamphetamine based on the evidence that the defendant lived at the residence wherein the meth lab was discovered as shown by the owner's testimony and another witness who testified that the defendant slept at the home nightly and material used in the red phosphorous process for manufacturing methamphetamine was seized from the residence. Franks v. State, 745 S.E.2d 666, No. A13A0932, 2013 Ga. App. LEXIS 533 (2013).

Evidence was sufficient to support both the defendants' convictions for attempted trafficking by manufacturing methamphetamine because the evidence connected the defendants to the house and the rooms in which the manufacturing components and the items containing methamphetamine residue were found; the police found lantern fuel in the house, which was commonly used as a solvent in methamphetamine labs; the chief of police, who was qualified as an expert witness, testified that the items seized appeared to have been used in the red phosphorous process for manufacturing methamphetamine; and a chemical odor associated with methamphetamine labs lingered around the house. Franks v. State, 325 Ga. App. 488, 2013 Ga. App. LEXIS 1008 (2013).

Evidence sufficient to support conviction for cocaine trafficking.

Trial court did not err in convicting the defendant of trafficking in cocaine in violation of O.C.G.A. § 16-13-31(a)(1) because the jury was authorized to find that the defendant was in joint constructive possession of the cocaine and was a party to the crime pursuant to O.C.G.A. § 16-2-20(a) and (b)(3), and the trial evi-

dence authorized the jury to find that the only reasonable hypothesis pointed to the defendant's guilt of the drug offense; the evidence showed that the defendant participated and intentionally aided in the commission of the drug trafficking offense by driving the codefendants and the cocaine to the pre-arranged location for the transaction, warning the codefendants that the principal agent was a police officer and taking possession of the funds used for the transaction. Valdez v. State, 310 Ga. App. 274, 712 S.E.2d 656 (2011).

Evidence was sufficient to sustain the defendant's convictions for trafficking in cocaine, a violation of O.C.G.A. § 16-13-31(a)(1), and possession of ecstasy, a violation of O.C.G.A. § 16-13-30(a), although the defendant was neither in actual possession of the contraband nor in control of the vehicle where the contraband was found because there was slight evidence of access, power, and intention to exercise control or dominion over the contraband and, therefore, excluding every other reasonable hypothesis save that of defendant's guilt, as required under former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6), the question of constructive, joint possession was within the jury's discretion. The ecstasy pills were found in a prescription pill bottle belonging to the defendant, and the pill bottle was found in a bag with the cocaine. Ferrell v. State, 312 Ga. App. 122, 717 S.E.2d 705 (2011).

Because the state introduced sufficient corroborating evidence of an accomplice's testimony that the drugs found in the basement of the house belonged to the defendant because the record showed the presence of all factors required to authorize admission of the similar transaction evidence, and because there was sufficient evidence of probable cause for a search warrant even without the representation that the affiant saw the informant buy drugs from the defendant, the evidence was sufficient to convict the defendant of trafficking in cocaine. Dickerson v. State, 312 Ga. App. 320, 718 S.E.2d 564 (2011).

Defendant was properly convicted of trafficking in 400 grams or more of a mixture containing cocaine, O.C.G.A. § 16-13-31(a)(1)(C), because the evidence tended to show a connection between the defendant and the contraband sufficient to prove the knowingly shared with the defendant's brother the power and intention to exercise dominion or control over the mixture; there was evidence that the cocaine mixture was in plain view and visible from the common sitting area of the apartment and that defendant was in the apartment alone for an extended period of time, and there was evidence of two similar transactions, which tended to show a course of conduct and intent to possess and distribute cocaine, possess large amounts of currency, and in one of the similar transactions, use a black bag to transport drug-related items. Holiman v. State, 313 Ga. App. 76, 720 S.E.2d 363 (2011).

Evidence was sufficient to sustain the defendant's conviction for trafficking in cocaine because the state presented sufficient evidence from which the jury could find that the defendant possessed the cocaine the defendant retrieved from the trunk of a car; the defendant retrieved the drugs from the trunk of the car and had the drugs in hand when the police arrested the defendant. Raines v. State, 313 Ga. App. 879, 722 S.E.2d 779 (2012).

Defendant's conviction for trafficking in cocaine, in violation of O.C.G.A. § 16-13-31(a)(1), was supported by sufficient evidence under O.C.G.A. §§ 16-2-20(b)(3) and former 24-4-8 (see now O.C.G.A. § 24-14-8) because both the defendant and the codefendant made statements regarding the defendant's involvement in the criminal activity, and the police observed the defendant's actions; there was evidence that the defendant was an active participant and a party to the trafficking offense. Martinez v. State, 314 Ga. App. 551, 724 S.E.2d 851 (2012).

Evidence that the defendant admitted to driving the car where the drugs were found, that the defendant had been paid to drive drugs from one county to another, that the defendant had transported drugs in the past, the defendant had been told the defendant was transporting marijuana, and a passenger told the defendant that the defendant was transporting four kilos of cocaine only as they saw police officers supported the defendant's convic-

Sufficiency of Evidence (Cont'd)

tion for trafficking cocaine. Martinez v. State, 315 Ga. App. 727, 728 S.E.2d 255 (2012).

Evidence was sufficient for the jury to find, beyond a reasonable doubt, that the defendant knew about the cocaine in a car and was acting jointly and in concert with a codefendant in the possession and transportation of the drugs because the fact that other people, including the codefendant, had equal access to the car did not automatically exculpate the defendant; instead, it was for the jury to decide whether evidence that others could have had access to the car was sufficient to overcome evidence that the defendant was in sole or joint, active or constructive possession of the drugs. Smith v. State, 316 Ga. App. 175, 728 S.E.2d 808 (2012).

Evidence was sufficient to support the defendant's conviction for trafficking in cocaine, in violation of O.C.G.A. § 16-13-31(a)(1), based on the defendant's participation in a sale of a sufficient amount and purity of cocaine to an undercover agent; although a codefendant conducted the sale directly, the defendant was a party to the sale under O.C.G.A. § 16-2-20(b)(3) since the defendant was in a nearby vehicle that the codefendant went to during the transaction. McGee v. State, 316 Ga. App. 661, 730 S.E.2d 131 (2012).

Evidence was sufficient to enable a rational trier of fact to find the defendant guilty beyond a reasonable doubt of trafficking in cocaine in violation of O.C.G.A. § 16-13-31(a)(1) because the state presented evidence that even if the defendant did not bring the bag of cocaine to an owner's residence, the defendant possessed the cocaine and was a party to the crime of trafficking in cocaine under O.C.G.A. § 16-2-20. Kegler v. State, 317 Ga. App. 427, 731 S.E.2d 111 (2012).

Defendant's conviction of trafficking in cocaine in violation of O.C.G.A. § 16-13-31(a)(1) was affirmed because the defendant was the driver of the car, and the defendant exercised dominion and control over the car throughout the car's use over the course of several days and the baggy containing the cocaine was in plain view between the defendant's driver's seat and the front passenger seat, which showed the defendant's access to the drugs. Sabb v. State, 317 Ga. App. 537, 731 S.E.2d 399 (2012).

Sufficient evidence existed to support the defendant's conviction for trafficking in cocaine based on the evidence showing that the mixture in the defendant's possession weighed 37.79 grams and had a purity of 34.6 percent of cocaine. Jones v. State, 319 Ga. App. 678, 738 S.E.2d 130 (2013).

Evidence sufficient for attempting to traffic in drugs. — Evidence that the defendant and the defendant's coconspirators arranged and attempted to purchase one kilogram of cocaine and also attempted to purchase 25 pounds of marijuana from an undercover officer and that the defendant showed the undercover officer money to make the purchases was sufficient to support the defendant's convictions for criminal attempt to traffic in cocaine and criminal attempt to traffic in marijuana. Rainey v. State, 319 Ga. App. 858, 738 S.E.2d 685 (2013).

Evidence sufficient for drug trafficking.

Evidence that the defendant resided in the house, refused to show the house to an individual who was in the yard even though the house was for sale, occupied a bedroom in which methamphetamine was found, was present when drugs were brought into the house, and was surrounded with plastic garbage bags full of narcotics packing material when police entered the house was sufficient to support defendant's conviction for trafficking in methamphetamine. Lopez-Jimenez v. State, 317 Ga. App. 868, 733 S.E.2d 42 (2012).

Evidence sufficient to support conviction of trafficking in methamphetamine.

Evidence that a defendant sold an undercover officer methamphetamine on two occasions, with one sale of more than 28 grams, and that the defendant participated in a later, larger drug deal, supported the defendant's convictions for trafficking in methamphetamine, O.C.G.A. § 16-13-31(e), and sale of methamphetamine under O.C.G.A. §§ 16-13-26(3)(B)

and 16-13-30(b). Culajay v. State, 309 Ga. App. 631, 710 S.E.2d 846 (2011).

Defendant was not entitled to a directed verdict of acquittal for the offense of trafficking in methamphetamine, in violation of O.C.G.A. § 16-13-31(e), because there was no evidence that anyone other than the defendant and the codefendant had recent access to the vehicle in which they were riding when they were stopped for a traffic violation, even though the vehicle belonged to the defendant's grandparent. Moreover, because the defendant and the codefendant were jointly charged with the offense of trafficking in methamphetamine, the State of Georgia was not required to show that the defendant was in sole constructive possession of the brick of methamphetamine which was found in a search of the vehicle. Mercado v. State, 317 Ga. App. 403, 731 S.E.2d 85 (2012).

Evidence that the defendant was the only occupant of the car, drugs were found under a blanket that the defendant held in the defendant's hand, and the defendant had a large sum of cash on the defendant's person, was sufficient to support the defendant's conviction for trafficking in methamphetamine and showed more than the defendant's mere presence at the scene. Reyes v. State, 322 Ga. App. 496, 745 S.E.2d 738 (2013).

Evidence was sufficient to convict the defendant of trafficking in methamphetamine because the defendant was in joint constructive possession of methamphetamine found under the seat of the vehicle the defendant was driving, and the jury was entitled to reject the defendant's alternative hypothesis that the defendant believed the defendant was simply delivering a vehicle to a motel as the jury could have found that, given the high street value of the methamphetamine, the defendant would not have been permitted to drive the vehicle alone to the motel unless the defendant was a trusted accomplice. Garcia-Maldonado v. State, 324 Ga. App. 518, 751 S.E.2d 149 (2013).

Evidence was sufficient to convict the defendant of trafficking in methamphetamine, possession of oxycodone and less than one ounce of marijuana, and driving while the defendant's license was suspended because the defendant knew the defendant's license to drive was suspended, and because the defendant knowingly had both the power and intention to exercise dominion or control over the controlled substances found in the backpack and was in constructive possession of those substances as the defendant was driving the car in which the backpack was located, and the defendant was linked to the backpack by the defendant's control of the car and evidence that the backpack contained a copy of a fake driver's license the defendant gave to an officer. Armstrong v. State, 325 Ga. App. 690, 754 S.E.2d 652 (2014).

Evidence insufficient for trafficking in methamphetamine. — Defendant's conviction for attempted trafficking by manufacturing methamphetamine was reversed because the evidence was not overwhelming as to the charge of trafficking; thus, it could not be said that it was harmless error for the trial court to refuse to instruct the jury on the lesser included offenses requested by the defendant. Franks v. State, 745 S.E.2d 666, No. A13A0932, 2013 Ga. App. LEXIS 533 (2013).

Evidence insufficient to sustain conviction for trafficking in cocaine.

Evidence was sufficient for a rational trier of fact to find the defendant guilty beyond a reasonable doubt of trafficking in methamphetamine, O.C.G.A. § 16-13-31(e), because the equal access doctrine was not applicable since the evidence of the defendant's possession of the drugs included more than the defendant's mere possession of the car where the drugs were discovered; because the defendant's possession of the methamphetamine found inside the trunk of the car was established by evidence besides the defendant's mere ownership, use, or possession of the car, including the defendant's statement that the defendant was transporting the methamphetamine, the issue of whether the drugs belonged to defendant or one of the other occupants was for the jury's determination. Arroyo v. State, 309 Ga. App. 494, 711 S.E.2d 60 (2011).

Defendant was entitled to reversal of the convictions for possession with intent to distribute and trafficking drugs be-

Sufficiency of Evidence (Cont'd)

cause the defendant was merely present at a residence, which the defendant did not own or lease, when a search warrant was executed, there was no evidence the defendant had actual or constructive possession of the drugs, and there was no evidence the defendant was a party to these crimes. Scott v. State, 2014 Ga. App. LEXIS 133 (Mar. 12, 2014).

Evidence held sufficient.

Evidence was sufficient to authorize a defendant's conviction for trafficking in cocaine under O.C.G.A. § 16-13-31(a)(1) as the evidence showed that, during a traffic stop, a sheriff's deputy found a package containing cocaine in a car owned and driven by the defendant. While the defendant argued that the defendant was entitled to a directed verdict of acquittal under the equal access rule because the sole evidence of the defendant's possession of the cocaine was the defendant's ownership and possession of the car and because others had equal access to the part of the car where the cocaine was found, the equal access rule was inapplicable as the state charged all three occupants of the car with possession of cocaine; thus, the state was entitled to rely on the presumption to show that the defendant, as the car's owner and driver, had possession and control over the cocaine. Warren v. State, 314 Ga. App. 477, 724 S.E.2d 404 (2012), cert. denied, No. S12C1072, 2012 Ga. LEXIS 548 (Ga. 2012).

Felony murder conviction reversed when no conspiracy. — Defendant's conviction for conspiracy to commit trafficking in cocaine was reversed because there was no evidence of any agreement between the defendant and those operating the stash house, beyond a possible buy-sell agreement, and since the felony murder conviction was predicated on the conspiracy offense, that conviction required reversal as well. Griffin v. State, 2013 Ga. LEXIS 1009 (Nov. 25, 2013).

Controlled buys demonstrated reliability of informant. — With regard to drug-related convictions, the trial court properly denied the defendant's motion to suppress because the search warrant was supported by probable cause in that the confidential informant took a position against penal interest by reporting to officers that the informant bought drugs from the defendant, the officer stated that the information supplied by the confidential informant was confirmed by conducting three controlled drug purchases from the defendant, and the controlled buys strongly corroborated the reliability of the informant and demonstrated a fair probability that contraband would be found in the defendant's house. Reid v. State, 321 Ga. App. 653, 742 S.E.2d 166 (2013).

Lesser included offenses. — Crimes set forth in O.C.G.A. §§ 16-13-30.3(b)(2) and 16-13-32.2, with regard to possessing objects or materials of any kind for the purpose of manufacturing or preparing a controlled substance, are lesser included offenses of the crime of trafficking by manufacture of methamphetamine under O.C.G.A. § 16-13-31(f). Franks v. State, 745 S.E.2d 666, No. A13A0932, 2013 Ga. App. LEXIS 533 (2013).

Because the possession of pseudoephedrine and possession of a drug-related object required proof of elements not required for the crime of trafficking, those crimes were not lesser included offenses of the crime of trafficking in methamphetamine as indicted, and the trial court did not err in denying the second defendant's requested charges on lesser included offenses. Franks v. State, 325 Ga. App. 488, 2013 Ga. App. LEXIS 1008 (2013).

Sentencing

Error in applying U.S. Sentencing Guidelines Manual. — District court erred by applying the U.S. Sentencing Guidelines Manual § 2L1.2(b) enhancement because O.C.G.A. § 16-13-31(a)(1), the portion of the Georgia statute under which the defendant was convicted, prohibited the possession of cocaine, not possession with the intent to manufacture, import, export, distribute, or dispense; because the district court considered the defendant's underlying conduct to arrive at the conclusion the defendant possessed cocaine with the intent to distribute the cocaine, the district court erred (correctly applying the modified categorical approach led to the conclusion that the de-

fendant's Georgia conviction was for simple possession and, thus, the conviction was not a drug trafficking offense). United States v. Veleta-Dominguez, No. 12-2031, 2013 U.S. App. LEXIS 229 (10th Cir. Jan. 4, 2013) (Unpublished).

Separate sentences for drug trafficking offenses. — Trial court did not err under O.C.G.A. §§ 16-1-6(2) and 16-1-7(a)(1) by sentencing the defendant separately for trafficking in methamphetamine, in violation of O.C.G.A. § 16-13-31, and trafficking in ecstasy, in violation of O.C.G.A. § 16-13-31.1, when the substance which was found in the defendant's vehicle tested positive for both methamphetamine and ecstasy as there was no evidence that chemical compounds or elements were shared between the drugs. Ahmad v. State, 312 Ga. App. 703, 719 S.E.2d 563 (2011).

16-13-31.1. Trafficking in ecstasy; sentencing; variation.

(a) Any person who sells, manufactures, delivers, brings into this state, or has possession of 28 grams or more of 3, 4-methylenedioxyamphetamine or 3, 4-methylenedioxymethamphetamine, or any mixture containing 3, 4-methylenedioxyamphetamine or 3, 4-methylenedioxymethamphetamine as described in Schedule I, in violation of this article commits the felony offense of trafficking in 3, 4-methylenedioxyamphetamine or 3, 4-methylenedioxymethamphetamine and, upon conviction thereof, shall be punished as follows:

(1) If the quantity of such substance involved is 28 grams or more, but less than 200 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of three years but not more than 30 years and shall pay a fine of not less than $25,000.00 nor more than $250,000.00;

(2) If the quantity of such substance involved is 200 grams or more, but less than 400 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of five years but not more than 30 years and shall pay a fine of not less than $50,000.00 nor more than $250,000.00; and

(3) If the quantity of such substance involved is 400 grams or more, the person shall be sentenced to a mandatory minimum term of imprisonment of ten years but not more than 30 years and shall pay a fine of not less than $100,000.00 nor more than $250,000.00.

(b)(1) In the court's discretion, the judge may depart from the mandatory minimum sentence specified for a person who is convicted of a violation of this Code section as set forth in paragraph (2) of this subsection if the judge concludes that:

(A) The defendant was not a leader of the criminal conduct;

(B) The defendant did not possess or use a firearm, dangerous weapon, or hazardous object during the crime;

(C) The criminal conduct did not result in a death or serious bodily injury to a person other than to a person who is a party to the crime;

(D) The defendant has no prior felony conviction; and

(E) The interests of justice will not be served by the imposition of the prescribed mandatory minimum sentence.

(2) The sentencing departure ranges pursuant to paragraph (1) of this subsection shall be as follows:

(A) Any person convicted of violating paragraph (1) of subsection (a) of this Code section, one year and six months to 30 years imprisonment and a fine of not less than $12,500.00 nor more than $250,000.00;

(B) Any person convicted of violating paragraph (2) of subsection (a) of this Code section, two years and six months to 30 years imprisonment and a fine of not less than $25,000.00 nor more than $250,000.00; and

(C) Any person convicted of violating paragraph (3) of subsection (a) of this Code section, five to 30 years imprisonment and a fine of not less than $50,000.00 nor more than $250,000.00;

(3) If a judge reduces the mandatory minimum sentence pursuant to this subsection, the judge shall specify on the record the circumstances for the reduction and the interests served by such departure. Any such order shall be appealable by the State of Georgia pursuant to Code Section 5-7-1.

(4) As used in this paragraph, the term:

(A) "Dangerous weapon" shall have the same meaning as set forth in Code Section 16-11-121.

(B) "Firearm" shall have the same meaning as set forth in Code Section 16-11-127.1.

(C) "Hazardous object" shall have the same meaning as set forth in Code Section 20-2-751.

(D) "Leader" means a person who planned and organized others and acted as a guiding force in order to achieve a common goal.

(c) The district attorney may move the sentencing court to impose a reduced or suspended sentence upon any person who is convicted of a violation of this Code section who provides substantial assistance in the identification, arrest, or conviction of any of his or her accomplices, accessories, coconspirators, or principals. Upon good cause shown, the motion may be filed and heard in camera. The judge hearing the motion may impose a reduced or suspended sentence if he or she finds that the defendant has rendered such substantial assistance.

(d) In the court's discretion, the judge may depart from the mandatory minimum sentence specified in this Code section for a person who

is convicted of a violation of this Code section when the prosecuting attorney and the defendant have agreed to a sentence that is below such mandatory minimum.

(e) Notwithstanding Code Section 16-13-2, any sentence imposed pursuant to subsection (b) of this Code section shall not be reduced by any earned time, early release, work release, leave, or other sentence-reducing measures under programs administered by the Department of Corrections, the effect of which would be to reduce the period of incarceration ordered by the sentencing court or any form of pardon, parole, or commutation of sentence by the State Board of Pardons and Paroles; provided, however, that during the final year of incarceration, a defendant so sentenced shall be eligible to be considered for participation in a Department of Corrections administered transitional center or work release program. (Code 1981, § 16-13-31.1, enacted by Ga. L. 2004, p. 1070, § 1; Ga. L. 2007, p. 47, § 16/SB 103; Ga. L. 2013, p. 222, § 5/HB 349; Ga. L. 2014, p. 432, § 2-9/HB 826; Ga. L. 2014, p. 780, § 2-3/SB 364.)

The 2013 amendment, effective July 1, 2013, designated the existing provisions of this Code section as subsection (a); deleted "knowingly" following "Any person who" near the beginning of the introductory paragraph of subsection (a); and added subsections (b) through (e). See editor's note for applicability.

The 2014 amendments. — The first 2014 amendment, effective July 1, 2014, in subparagraph (b)(1)(B), inserted "firearm, dangerous" and inserted ", or hazardous object"; in paragraph (b)(4), substituted "paragraph" for "subsection", added subparagraphs (b)(4)(A) through (b)(4)(C); redesignated former subparagraph (b)(4)(A) as present subparagraph (b)(4)(D); and deleted former subparagraph (b)(4)(B), which read: "'Weapon' shall have the same meaning as set forth in Code Section 16-11-127.1." The second 2014 amendment, effective April 28, 2014, inserted "subsection (b) of" near the beginning of subsection (e).

Editor's notes. — Ga. L. 2013, p. 222, § 21/HB 349, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2013, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2013, shall be governed by the statute in effect at the time of such offense."

Ga. L. 2014, p. 780, § 5-1/SB 364, not codified by the General Assembly, provides, in part, that this Act shall apply to any sentence imposed on or after July 1, 2013.

Law reviews. — For article, "Appeal and Error: Appeal or Certiorari by State in Criminal Cases," see 30 Ga. St. U.L. Rev. 17 (2013).

JUDICIAL DECISIONS

Sufficient evidence to support conviction for trafficking MDMA.

Sufficient evidence supported the defendant's conviction for trafficking in 3,4 methylenedioxymethamphetamine (MDMA, or "ecstasy") as the jury was authorized to find the defendant knew that a codefendant had possession of marijuana and ecstasy, and the evidence showed that the defendant allowed the codefendant to place the drugs in the trunk of the defendant's vehicle and knowingly transported the drugs in the vehicle. Jackson v. State, 314 Ga. App. 272, 724 S.E.2d 9 (2012).

Imposition of separate trafficking sentences proper for methamphetamine and ecstasy. — Trial court did not

err under O.C.G.A. §§ 16-1-6(2) and 16-1-7(a)(1) by sentencing the defendant separately for trafficking in methamphetamine, in violation of O.C.G.A. § 16-13-31, and trafficking in ecstasy, in violation of O.C.G.A. § 16-13-31.1, when the substance which was found in the defendant's vehicle tested positive for both methamphetamine and ecstasy as there was no evidence that chemical compounds or elements were shared between the drugs. Ahmad v. State, 312 Ga. App. 703, 719 S.E.2d 563 (2011).

16-13-32.2. Possession and use of drug related objects.

JUDICIAL DECISIONS

Use of similar transaction evidence in drug possession. — With regard to the defendant's convictions for trafficking in cocaine and possession of a drug related object, the trial court did not abuse the court's discretion by allowing the state to introduce evidence of the defendant's 2003 drug possession incident because both incidents involved the possession and concealment of cocaine and, during both incidents, the defendant described the process by which the drugs were obtained. Stover v. State, 322 Ga. App. 142, 744 S.E.2d 119 (2013).

Resentencing required. — Because the revocation petition did not specify which Code section defendant was alleged to have violated for the drug-related objects offense and instead simply accused the defendant of possessing certain specified drug-related objects, the only violation alleged and proven fell under O.C.G.A. § 16-13-32.2, a misdemeanor, therefore, the trial court was not authorized to revoke more than two years of the defendant's outstanding probation. Henley v. State, 317 Ga. App. 776, 732 S.E.2d 836 (2012).

Failure to instruct jury on lesser included offenses reversible error. — Defendant's conviction for attempted trafficking by manufacturing methamphetamine was reversed because the evidence was not overwhelming as to the charge of trafficking; thus, it could not be said that it was harmless error for the trial court to refuse to instruct the jury on the lesser included offenses requested by defendant. Franks v. State, 745 S.E.2d 666, No. A13A0932, 2013 Ga. App. LEXIS 533 (2013).

Lesser included offense to trafficking. — Crimes set forth in O.C.G.A. §§ 16-13-30.3(b)(2) and 16-13-32.2, with regard to possessing objects or materials of any kind for the purpose of manufacturing or preparing a controlled substance, are lesser included offenses of the crime of trafficking by manufacture of methamphetamine under O.C.G.A. § 16-13-31(f). Franks v. State, 745 S.E.2d 666, No. A13A0932, 2013 Ga. App. LEXIS 533 (2013).

Because the possession of pseudoephedrine and possession of a drug-related object required proof of elements not required for the crime of trafficking, those crimes were not lesser included offenses of the crime of trafficking in methamphetamine as indicted, and the trial court did not err in denying the second defendant's requested charges on lesser-included offenses. Franks v. State, 325 Ga. App. 488, 2013 Ga. App. LEXIS 1008 (2013).

Cited in Walker v. State, 323 Ga. App. 685, 747 S.E.2d 691 (2013).

16-13-32.3. Use of communication facility in committing or facilitating commission of act which constitutes felony under chapter; penalty.

JUDICIAL DECISIONS

Cited in State v. Harrell, 323 Ga. App. 56, 744 S.E.2d 867 (2013).

16-13-32.4. Manufacturing, distributing, dispensing, or possessing controlled substances in, on, or near public or private schools.

JUDICIAL DECISIONS

No application to university campus. — Because the crime for possession of marijuana and a firearm took place on a university campus, O.C.G.A. § 16-13-32.4 had no application. Carter v. State, 319 Ga. App. 609, 737 S.E.2d 714 (2013).

Sufficient evidence for conviction. Officer's testimony regarding the location of parks, schools, and public housing in the area, the distance of which was confirmed through use of a global positioning system, supported the defendant's convictions for possession of marijuana with the intent to distribute within 1,000 feet of public housing, within 1,000 feet of a state park, and within 1,000 feet of a school. Evans v. State, 318 Ga. App. 706, 734 S.E.2d 527 (2012).

16-13-32.5. Manufacturing, distributing, dispensing, or possessing controlled substance, marijuana, or counterfeit substance near park or housing project; nonmerger of offenses; evidence of location and boundaries; posting; affirmative defenses.

JUDICIAL DECISIONS

Failure to prove role of public housing authority. — Evidence was not sufficient to support convictions for distributing cocaine within 1,000 feet of a public housing project because the state failed to offer any evidence establishing that the apartment complex where the sale occurred was owned or operated by a public housing authority. Cooper v. State, 324 Ga. App. 451, 751 S.E.2d 102 (2013).

Evidence showed substance was cocaine. — Defendant's claim that the evidence was insufficient to support the defendant's convictions because the state relied on hearsay testimony of a forensic scientist who did not personally conduct the chemical tests failed because, even assuming the testimony was inadmissible, the state submitted sufficient evidence, including testimony from the police, the informant, and the defendant, establishing that the drugs recovered, with one exception, constituted cocaine. Cooper v. State, 324 Ga. App. 451, 751 S.E.2d 102 (2013).

Evidence sufficient for conviction. Evidence was sufficient to find the defendant guilty of possession of marijuana with intent to distribute, O.C.G.A. § 16-13-30(j)(1), and possession of marijuana with intent to distribute within 1,000 feet of a housing project, O.C.G.A. § 16-13-32.5(b), because it appeared that the jury accepted that version of the events most unfavorable to the defendant after hearing all of the evidence and resolving the credibility of all of the witnesses, and the jury was solely authorized

to make such determinations. Bass v. State, 309 Ga. App. 601, 710 S.E.2d 818 (2011).

Evidence was sufficient to sustain a defendant's conviction for possession of a controlled substance with intent to distribute within 1,000 feet of a public housing project as evidence that the public housing complex where drugs were found in the apartment of the defendant's girlfriend was under the jurisdiction of a housing authority, pursuant to O.C.G.A. §§ 8-3-1 and 8-3-2, was twice presented at trial, the evidence showed that the location consisted of dwelling units, and that these dwelling units were occupied by low and moderate income families. Robinson v. State, 314 Ga. App. 545, 724 S.E.2d 846 (2012).

Officer's testimony regarding the location of parks, schools, and public housing in the area, the distance of which was confirmed through use of a global positioning system, supported the defendant's convictions for possession of marijuana with the intent to distribute within 1,000 feet of public housing, within 1,000 feet of a state park, and within 1,000 feet of a school. Evans v. State, 318 Ga. App. 706, 734 S.E.2d 527 (2012).

Appellate court refused to disturb the jury's verdict convicting defendant of possession of drugs with the intent to distribute because after hearing the evidence and having the opportunity to judge the credibility of the witnesses, the jury properly concluded that the only reasonable hypothesis was that defendant possessed the drugs found hidden in the kitchen, despite the defendant's argument that others had equal access. King v. State, 755 S.E.2d 22, 2014 Ga. App. LEXIS 74 (2014).

Cited in Beard v. State, 318 Ga. App. 128, 733 S.E.2d 426 (2012).

16-13-32.6. Manufacturing, distributing, dispensing, or possessing with intent to distribute controlled substance or marijuana in, on, or within drug-free commercial zone.

(a) It shall be unlawful for any person to illegally manufacture, distribute, dispense, or possess with intent to distribute a controlled substance or marijuana in, on, or within any real property which has been designated under this Code section as a drug-free commercial zone.

(b)(1) Any person who violates or conspires to violate subsection (a) of this Code section shall be guilty of a felony and upon conviction shall receive the following punishment:

(A) Upon a first conviction, imprisonment for not more than 20 years or a fine of not more than $20,000.00, or both; or

(B) Upon a second or subsequent conviction, imprisonment for not less than five years nor more than 40 years or a fine of not more than $40,000.00, or both.

(2) A sentence imposed under this Code section shall be served consecutively to any other sentence imposed.

(3) Any person convicted of a violation of subsection (a) of this Code section may, as a condition of probation or parole, be required by the sentencing court or State Board of Pardons and Paroles to refrain for a period of not more than 24 months from entering or at any time

being within the boundaries of the drug-free commercial zone wherein such person was arrested for a violation of this Code section. Any person arrested for violation of his or her terms of probation shall be governed by the provisions of Code Section 42-8-38 and any person arrested for a violation of his or her terms of parole shall be governed by the provisions of Article 2 of Chapter 9 of Title 42.

(c) A conviction arising under this Code section shall not merge with a conviction arising under any other provision of this article.

(d) Any municipality or county may designate one or more commercial areas where there is a high rate of drug related crime as drug-free commercial zones. A drug-free commercial zone may include only an area which the municipality or county has previously zoned commercial pursuant to its planning and zoning powers and any residential area contiguous to such commercially zoned area extending not more than one-half mile from the external boundary of any portion of the commercially zoned area. A municipality or county which designates one or more areas as drug-free commercial zones shall be required to make such designations by ordinance and shall be required to post prominent and conspicuous signs on the boundaries of and throughout any such drug-free commercial zone. A municipality or county shall be required to file with the Department of Community Affairs a copy of each ordinance which shall have attached a clearly defined map describing each drug-free commercial zone and a report evidencing all drug related crimes in such drug-free commercial zone area during the 12 months preceding the enactment of such ordinance. A municipality or county shall also be required to file with the Department of Community Affairs, during the period that a drug-free commercial zone is in effect, annual reports evidencing all drug related crimes in such drug-free commercial zone. Such ordinances, maps, and drug crime reports shall be maintained in a permanent register by such department, and copies of such ordinances, maps, and drug crime reports of drug-free commercial zones shall be made available to the public at a reasonable cost. A drug-free commercial zone shall not be effective and valid for the purposes of this Code section until it has been adopted by the General Assembly by general law. After the General Assembly has adopted one or more drug-free commercial zones, the governing authority of each municipality or county which has such a zone or zones designated and adopted shall be required to have a description of each such zone published in the legal organ of the municipality or county at least once a week for three weeks. A drug-free commercial zone adopted by the General Assembly shall remain in effect for five years and shall expire five years from the effective date of such adoption by the General Assembly. An area which has been a drug-free commercial zone may be continued as or again designated as a drug-free commercial zone upon the enactment of an ordinance and adoption thereof by the General

Assembly in accordance with the provisions of this subsection. No arrest for a violation of this Code section shall be permissible for a period of 30 days immediately following the effective date of the adoption of such drug-free commercial zone by the General Assembly.

(e) In a prosecution under this Code section, a true copy of a map produced or reproduced by any municipal or county agency or department for the purpose of depicting the location and boundaries of any drug-free commercial zone and filed and on record at the Department of Community Affairs shall, if certified as a true copy by the custodian of such records at such department, be admissible and shall constitute prima-facie evidence of the location and boundaries of such zone. A map approved under this Code section may be revised from time to time by the governing body of the municipality or county; provided, however, that a revised map shall not become effective and the revised area shall not be a drug-free commercial zone until the revised map has been filed with the Department of Community Affairs and adopted by the General Assembly by general law; provided, further, that the revision of a drug-free commercial zone shall not extend the expiration date of such a drug-free commercial zone. The original copy of every map approved or revised under this subsection or a true copy of such original map shall be filed with the Department of Community Affairs and shall be maintained as an official record of the department. This subsection shall not preclude the prosecution from introducing or relying upon any other evidence or testimony to establish any element of this offense.

(f) The General Assembly hereby adopts and incorporates into this Code section all drug-free commercial zones which have been adopted by municipal or county ordinance and entered in the register of the Department of Community Affairs as provided for in subsection (d) of this Code section on or before July 1, 2013. (Code 1981, § 16-13-32.6, enacted by Ga. L. 1996, p. 1049, § 1; Ga. L. 1999, p. 556, § 1; Ga. L. 2004, p. 1070, § 1A; Ga. L. 2011, p. 308, § 1/HB 457; Ga. L. 2013, p. 778, § 1/HB 187.)

The 2013 amendment, effective July 1, 2013, substituted "July 1, 2013" for "March 28, 2011" at the end of subsection (f).

16-13-33. Attempt or conspiracy to commit offense under this article.

JUDICIAL DECISIONS

Evidence sufficient for criminal attempt to traffic in drugs. — Evidence that the defendant and the defendant's coconspirators arranged and attempted to purchase one kilogram of cocaine and also attempted to purchase 25 pounds of marijuana from an undercover officer and that the defendant showed the undercover officer money to make the purchases was sufficient to support the defendant's convictions for criminal attempt to traffic in cocaine and criminal attempt to traffic in

marijuana. Rainey v. State, 319 Ga. App. 858, 738 S.E.2d 685 (2013).

16-13-41. Prescriptions.

JUDICIAL DECISIONS

Evidence sufficient for showing dependency created. — Evidence that the course of treatment the defendant, a doctor, prescribed for the victim would create a physiological dependence in any patient, even one who did not have a prior addictive tendency, and that the victim exhibited signs of drug abuse that would have been recognized by a treating physician was sufficient to support conviction under O.C.G.A. § 16-13-41(f). Chua v. State, 289 Ga. 220, 710 S.E.2d 540 (2011).

16-13-42. Unauthorized distribution and dispensation; refusal or failure to keep records; refusal to permit inspection; unlawfully maintaining structure or place; penalty.

JUDICIAL DECISIONS

Evidence insufficient that home was used for drug purposes. — Conviction for knowingly keeping a dwelling place for using controlled substances was not supported by sufficient evidence since the only evidence was that the building in question was defendant's home; there was no evidence one of the purposes of the home was to provide defendant a place to use and keep controlled substances. Chua v. State, 289 Ga. 220, 710 S.E.2d 540 (2011).

Evidence insufficient to show defendant kept or maintained house. — Since there was no evidence that the defendant kept or maintained the house, the defendant was entitled to reversal of the conviction for knowingly keeping a dwelling for the purpose of using controlled substances. Scott v. State, 2014 Ga. App. LEXIS 133 (Mar. 12, 2014).

16-13-49. Forfeitures.

JUDICIAL DECISIONS

Analysis

General Consideration
Procedure
Seizure

General Consideration

Complaint sufficient.

Because the forfeiture statute declared as contraband property that was, directly or indirectly, used or intended for use in any manner to facilitate a drug violation, the complaint made out a prima facie case for civil forfeiture of the property as contraband; the complaint alleged that items were seized in an investigation involving the conspiracy to traffic cocaine and marijuana, which were violations of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq. Arreola-Soto v. State of Ga., 314 Ga. App. 165, 723 S.E.2d 482 (2012), cert. denied, No. S12C1048, 2012 Ga. LEXIS 593 (Ga. 2012).

General Consideration (Cont'd)

In rem proceeding.

In rem civil forfeiture proceeding under O.C.G.A. § 16-13-49 did not require a conviction against the property owner be proved. Orange v. State of Ga., 319 Ga. App. 516, 736 S.E.2d 477 (2013).

State's burden of proof.

Because the case was an in rem proceeding for property valued at more than $25,000, the pleading requirement of O.C.G.A. § 16-13-49(o) applied, not O.C.G.A. § 16-13-49(n); the state's statutory burden, in part, was to allege the essential elements of the violation, not the essential facts supporting the alleged offense. Arreola-Soto v. State of Ga., 314 Ga. App. 165, 723 S.E.2d 482 (2012), cert. denied, No. S12C1048, 2012 Ga. LEXIS 593 (Ga. 2012).

State set forth a prima facie case. — State set out a prima facie case for forfeiture because the presence of a large amount of currency in close proximity with firearms, ammunition, and 16.3 grams of marijuana packaged in three small bags, a manner commonly used for distribution, set out a prima facie case that the marijuana was used to facilitate a transaction in or purchase of or sale of marijuana. Glenn v. State of Ga., 320 Ga. App. 214, 739 S.E.2d 692 (2013).

Innocent ownership not proven.

Trial court erred in denying the state's in rem forfeiture action and adjudicating a husband an innocent owner of a vehicle the state seized when his wife was arrested for possessing methamphetamine and other crimes because the husband lacked title to the car, and any other interest he could have had was in community with the wife since the husband assigned his interest in the car to the wife and the certificate itself listed the purchase date as one day before the seizure; thus, pursuant to the Motor Vehicle Certificate of Title Act, O.C.G.A. § 40-3-32, the assignment to the wife was completed one day before the seizure, and the husband had no ownership interest in the vehicle on that day. State v. Centers, 310 Ga. App. 413, 713 S.E.2d 479 (2011).

Procedure

Proceedings were untimely.

It was undisputed that the initial hearing on the state's forfeiture complaint was not scheduled until 63 days after the defendant was served with the complaint, and the state neither moved for, nor did the trial court grant, a continuance within the statutorily imposed 60-day time period. Because the mandatory statutory time limitations contained within O.C.G.A. § 16-13-49(o)(5) were not met, the court was constrained to reverse the trial court's judgment of forfeiture. Goodwin v. State of Ga., 321 Ga. App. 548, 739 S.E.2d 814 (2013).

Trial court should have dismissed an in rem civil forfeiture action because no timely hearing on the underlying forfeiture complaint was held. After the trial court granted the state's motion to stay the proceedings, approximately one year passed before either a hearing or another continuance. Bourassa v. State of Ga., 323 Ga. App. 435, 746 S.E.2d 815 (2013).

Contents of answer.

Trial court did not err by striking appellants answer to the state's complaint for forfeiture and dismissing appellants' claims as to some items because the entries did not contain sufficient information to satisfy the pleading requirement under O.C.G.A. § 16-13-49(o)(3)(D); for those entries there was a blank or no information describing appellants' property interest, and certain additional items were listed with only vague information. Arreola-Soto v. State of Ga., 314 Ga. App. 165, 723 S.E.2d 482 (2012), cert. denied, No. S12C1048, 2012 Ga. LEXIS 593 (Ga. 2012).

Trial court erred in striking appellants' answer to the state's complaint for forfeiture as to certain items because the information appellants provided in the answer was sufficient to plead an interest in the property under O.C.G.A. § 16-13-49(o)(3)(D); appellants' ownership interest was described with the name of the transferor and a year of purchase. Arreola-Soto v. State of Ga., 314 Ga. App. 165, 723 S.E.2d 482 (2012), cert. denied, No. S12C1048, 2012 Ga. LEXIS 593 (Ga. 2012).

In a forfeiture action, a trial court properly struck the answer of one of the four claimants to the seized property because the answer was insufficient by setting forth only conclusory allegations of ownership. Morgan v. State of Ga., 323 Ga. App. 852, 748 S.E.2d 491 (2013).

Under Georgia law, the sufficiency of an answer to a forfeiture petition must be judged in light of the specific statutory requirements. Furthermore, while a claimant must satisfy each of the pleading requirements contained in O.C.G.A. § 16-13-49(o)(3), the trial court must consider the claimant's compliance with those requirements in a reasonable manner. Morgan v. State of Ga., 323 Ga. App. 852, 748 S.E.2d 491 (2013).

In a forfeiture action, a trial court erred by striking three answers from claimants of the seized property because each set forth the nature and extent of their interest in the property, the date and identity of transferors, the circumstances of acquisition, and that they were innocent owners under O.C.G.A. § 16-13-49(e)(1)(B), though two cited the wrong statute subsection. Morgan v. State of Ga., 323 Ga. App. 852, 748 S.E.2d 491 (2013).

Amendment to correct error in filing answer.

Trial court did not abuse the court's discretion by striking the claimants' answers to the complaint in a forfeiture proceeding because the claimants were permitted by law to amend the claimants answers to correct the lack of verification, but never did so and although the claimants claim that the trial court failed to afford the claimants an opportunity to amend the claimants' pleadings, the claimants failed to show that the trial court refused to consider such an amendment or did anything to preclude or bar the filing thereof. Howard v. State of Ga., 321 Ga. App. 881, 743 S.E.2d 540 (2013).

Failure to make findings in response to excessiveness argument. — In an in rem civil forfeiture action, a trial court erred by ordering the defendant's truck forfeited without making findings of fact and conclusions of law on the record as to whether the court considered the mandatory guidelines set forth in case law as to whether the forfeiture was excessive. Buchanan v. State of Ga., 319 Ga. App. 525, 737 S.E.2d 321 (2013).

Seizure

Reasonable suspicion found for Terry stop thereby allowing forfeiture.

Forfeiture of funds recovered from the owner's vehicle was proper as the officer was authorized to conduct a brief investigative stop after observing illegally tinted windows, the search was proper after the officer observed that the owner was nervous, a strong odor of air freshener was coming from the vehicle, and a drug dog alerted, and the determination that the currency was used or intended for use in a drug transaction was supported by expert testimony as to the bundling of large amounts of cash, the use of multiple cell phones by those in the drug trade, and the drug dog alert indicating that a controlled substance had recently been in the car. Mordica v. State of Ga., 319 Ga. App. 149, 736 S.E.2d 153 (2012).

16-13-54.1. Weight or quantity of controlled substance or marijuana not essential element of offense.

When an offense in this part measures a controlled substance or marijuana by weight or quantity, the defendant's knowledge of such weight or quantity shall not be an essential element of the offense, and the state shall not have the burden of proving that a defendant knew the weight or quantity of the controlled substance or marijuana in order to be convicted of an offense. (Code 1981, § 16-13-54.1, enacted by Ga. L. 2013, p. 222, § 6/HB 349.)

Effective date. — This Code section became effective July 1, 2013. See editor's note for applicability.

Editor's notes. — Ga. L. 2013, p. 222, § 21/HB 349, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2013, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2013, shall be governed by the statute in effect at the time of such offense."

Law reviews. — For article, "Appeal and Error: Appeal or Certiorari by State in Criminal Cases," see 30 Ga. St. U.L. Rev. 17 (2013).

Part 2

Electronic Data Base of Prescription Information

Law reviews. — For article on the 2011 enactment of this part, see 28 Ga. St. U.L. Rev. 269 (2011).

16-13-57. Program to record prescription information into electronic database; administration and oversight.

Law reviews. — For article, "Crimes and Offenses: Controlled Substances," see 28 Ga. St. U.L. Rev. 269 (2011).

16-13-58. Funds for development and maintenance of program; granting of funds to dispensers.

Law reviews. — For article, "Crimes and Offenses: Controlled Substances," see 28 Ga. St. U.L. Rev. 269 (2011).

16-13-59. Information to include for each Schedule II, III, IV, or V controlled substance prescription; compliance.

(a) For purposes of the program established pursuant to Code Section 16-13-57, each dispenser shall submit to the agency by electronic means information regarding each prescription dispensed for a Schedule II, III, IV, or V controlled substance. The information submitted for each prescription shall include at a minimum, but shall not be limited to:

(1) DEA permit number or approved dispenser facility controlled substance identification number;

(2) Date the prescription was dispensed;

(3) Prescription serial number;

(4) If the prescription is new or a refill;

(5) National Drug Code (NDC) for drug dispensed;

(6) Quantity and strength dispensed;

(7) Number of days supply of the drug;

(8) Patient's name;

(9) Patient's address;

(10) Patient's date of birth;

(11) Patient gender;

(12) Method of payment;

(13) Approved prescriber identification number or prescriber's DEA permit number;

(14) Date the prescription was issued by the prescriber; and

(15) Other data elements consistent with standards established by the American Society for Automation in Pharmacy, if designated by regulations of the agency.

(b) Each dispenser shall submit the prescription information required in subsection (a) of this Code section in accordance with transmission methods and frequency requirements established by the agency on at least a weekly basis and shall report, at a minimum, such prescription information no later than ten days after the prescription is dispensed. If a dispenser is temporarily unable to comply with this subsection due to an equipment failure or other circumstances, such dispenser shall notify the board and agency.

(c) The agency may issue a waiver to a dispenser that is unable to submit prescription information by electronic means acceptable to the agency. Such waiver may permit the dispenser to submit prescription information to the agency by paper form or other means, provided all information required in subsection (a) of this Code section is submitted in this alternative format and in accordance with the frequency requirements established pursuant to subsection (b) of this Code section. Requests for waivers shall be submitted in writing to the agency.

(d) The agency shall not revise the information required to be submitted by dispensers pursuant to subsection (a) of this Code section more frequently than annually. Any such change to the required information shall neither be effective nor applicable to dispensers until six months after the adoption of such changes.

(e) The agency shall not access or allow others to access any identifying prescription information from the electronic data base after one year from the date such information was originally received by the agency. The agency may retain aggregated prescription information for a period of one year from the date the information is received but shall promulgate regulations and procedures that will ensure that any

identifying information the agency receives from any dispenser or reporting entity that is one year old or older is deleted or destroyed on an ongoing basis in a timely and secure manner.

(f) A dispenser may apply to the agency for an exemption to be excluded from compliance with this Code section if compliance would impose an undue hardship on such dispenser. The agency shall provide guidelines and criteria for what constitutes an undue hardship.

(g) For purposes of this Code section, the term "dispenser" shall include any pharmacy or facility physically located in another state or foreign country that in any manner ships, mails, or delivers a dispensed controlled substance into this state. (Code 1981, § 16-13-59, enacted by Ga. L. 2011, p. 659, § 2/SB 36; Ga. L. 2013, p. 127, § 10/HB 209.)

The 2013 amendment, effective July 1, 2013, added subsection (g).

Law reviews. — For article, "Crimes and Offenses: Controlled Substances," see 28 Ga. St. U.L. Rev. 269 (2011).

16-13-64. Violations; criminal penalties; civil damages.

Law reviews. — For article, "Crimes and Offenses: Controlled Substances," see 28 Ga. St. U.L. Rev. 269 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Offenses arising from a violation of O.C.G.A. § 16-13-64 are offenses for which fingerprinting is required. 2011 Op. Att'y Gen. No. 11-5.

ARTICLE 3

DANGEROUS DRUGS

16-13-71. "Dangerous drug" defined.

(a) A "dangerous drug" means any drug other than a drug contained in any schedule of Article 2 of this chapter, which, under the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040 (1938)), 21 U.S.C. Section 301, et seq., as amended, may be dispensed only upon prescription. In any civil or criminal action or other proceedings, a certification from the Food and Drug Administration of the United States Department of Health and Human Services attesting to the fact that a drug other than a drug contained in any schedule of Article 2 of this chapter involved in the action or proceeding is a dangerous drug that federal law prohibits dispensing of without a prescription pursuant to the Federal Food, Drug, and Cosmetic Act shall be admissible as prima-facie proof that such drug is a "dangerous drug."

(b) In addition to subsection (a) of this Code section, a "dangerous drug" means any other drug or substance declared by the General Assembly to be a dangerous drug; to include any of the following drugs, chemicals, or substances; salts, isomers, esters, ethers, or derivatives of such drugs, chemicals, or substances which have essentially the same pharmacological action; all other salts, isomers, esters, ethers, and compounds of such drugs, chemicals, or substances unless specifically exempted and the following devices, identified as "dangerous drugs":

(.03) Abacavir;

(.035) Abarelix;

(.037) Abatacept;

(.04) Abciximab;

(.042) Abiraterone;

(.043) abobotulinumtoxinA;

(.045) Acamprostate;

(.05) Acarbose;

(.1) Acebutolol;

(1) Acecarbromal;

(2) Acenocoumarol;

(3) Acetazolamide;

(3.5) Reserved;

(4) Acetohexamide;

(4.1) Aceto-hydroxamic acid;

(5) Acetophenazine;

(6) Acetosulfone;

(7) Acetyl sulfamethoxypyridazine;

(8) Acetyl sulfisoxazole;

(9) Acetylcarbromal;

(10) Acetylcholine;

(11) Acetylcysteine;

(12) Acetyldigitoxin;

(12.1) Acitretin;

(12.5) Aclidinium bromide;

(13) Acrisorcin;

(13.3) Acrivastine;

(13.5) Acyclovir;

(13.53) Adalimumab;

(13.55) Adapalene;

(13.6) Adenosine;

(14) Adenosine 5-monophosphate;

(14.5) Adenovirus;

(15) Adenylic acid;

(16) Adiphenine hydrochloride;

(16.5) Ado-trastuzumab;

(17) Adrenal cortex extracts;

(17.1) Afatinib;

(17.3) Aflibercept;

(17.5) Albendazole;

(17.7) Albiraterone;

(18) Albumin, normal human serum;

(18.1) Albuterol;

(19) Albutonium;

(19.3) Alcaftadine;

(19.5) Alclometasone dipropionate;

(19.6) Alendronate;

(19.65) Alfuzosin;

(19.7) Alglucerase;

(19.75) Alglucosidase alfa;

(19.77) Aliskiren;

(19.8) Alitretinoin;

(20) Alkaverir;

(21) Alkavervir;

(21.1) Alkyl nitrites;

(22) Allopurinol;

(22.2) Almotriptan;

(22.3) Alogliptin;

(22.5) Alosetron;

(23) Alpha amylase;

(23.1) Alprostadil;

(24) Alseroxylon;

(24.1) Altenodol;

(24.6) Altretamine;

(25) Aluminum nicotinate;

(26) Alverine;

(26.5) Alvimopan;

(27) Amantadine;

(28) Ambenonium chloride;

(28.5) Ambrisentan;

(29) Ambrosiacae follens;

(30) Amcinonide;

(30.1) Amdinocillin;

(30.5) Amifostine;

(31) Amikacin;

(31.1) Amiloride;

(32) Aminacrine;

(33) 4-amino-N-methyl-pteroylglutamic acid;

(34) Amino acid preparations for injection or vaginal use;

(35) Aminocaproic acid;

(36) Aminohippurate;

(36.5) Aminolevulinic acid;

(37) Aminophylline;

(38) Aminosalicylate — See exceptions;

(39) Aminosalicylate calcium — See exceptions;

(40) Aminosalicylate potassium — See exceptions;

(41) Aminosalicylate sodium — See exceptions;

(42) Aminosalicylic acid — See exceptions;

(42.1) Amiodarone;

(43) Amisometradine;

(44) Amitriptyline;

(44.3) Amlexanox;

(44.5) Amlodipine;

(44.6) Ammonia, N-13;

(44.7) Ammonium lactate;

(45) Amodiaquin;

(45.5) Amoxapine;

(46) Amoxicillin;

(47) Amphotericin B;

(48) Ampicillin;

(48.2) Amprenavir;

(48.6) Amrinone;

(49) Amyl nitrite;

(50) Amylolytic enzymes;

(50.1) Anabolic steroids, if listed in Code Section 16-13-27.1 as being exempt as Schedule III controlled substances;

(50.3) Anagrelide;

(50.4) Anakinra;

(50.5) Anastrozole;

(51) Androgens, except those androgens listed in paragraph (6) of Code Section 16-13-27;

(52) Angiotensin amide;

(52.5) Anidulafungin;

(53) Anisindione;

(54) Anisotropine;

(55) Antazoline;

(56) Anterior pituitary hormones;

(57) Anthralin;

(58) Anti-coagulant acid:

(A) Citrate dextrose;

(59) Antigens:

(A) Alternaria tenius;

(B) Aqua ivy;

(C) Ash mix;

(D) Aspergillus fumigatus;

(E) Bacterial, Staphylococcus aureus, Type 1;

(F) Bacterial, Staphylococcus aureus, Type 3;

(G) Bacterial, Undenatured;

(H) Bee;

(I) Beech;

(J) Bermuda grass;

(K) Birch;

(L) California live oak;

(M) Candida albicans;

(N) Careless weed;

(O) Cat epithelia;

(P) Cattle epithelia;

(Q) Coccidioides immitis;

(R) Cottonwood fremont;

(S) Dog epithelia;

(T) Elm mix;

(U) English plantain;

(V) Feather mix;

(W) Gram negative bacterial;

(X) Helminthosporium sativum;

(Y) Hickory;

(Z) Hormodendrum hordei;

(AA) Hornet;

(BB) House dust;

(CC) House dust mix;

(DD) Insects;

(EE) Intradermal or scratching test;

(FF) Johnson grass;

(GG) Kentucky blue grass;

(HH) Kochia;

(II) Lamb quarters;

(JJ) Maple;

(KK) Mesquite;

(LL) Mixed epidermals;

(MM) Mixed grass, ragweeds (spring-fall);

(NN) Mixed grasses (spring);

(OO) Mixed inhalants;

(PP) Mixed molds;

(QQ) Mixed ragweed;

(RR) Mixed ragweed — mixed weeds (fall);

(SS) Mixed weeds;

(TT) Molds;

(UU) Mountain cedar;

(VV) Mugwort common;

(WW) National weed mix;

(XX) Oak mix;

(YY) Olive;

(ZZ) Orchard grass;

(AAA) Pecan;

(BBB) Penicillium notatum;

(CCC) Perennial rye;

(DDD) Poison oak and poison ivy;

(EEE) Pollens;

(FFF) Poplar mix;

(GGG) Prescription;

(HHH) Ragweed mix;

(III) Red top grass;

(JJJ) Respiratory bacterial;

(KKK) Rough pigweed;

(LLL) Russian thistle;

(MMM) Sagebrush common;

(NNN) Scale mix;

(OOO) Short ragweed;

(PPP) Simplified allergy screening set;

(QQQ) Skin bacterial;

(RRR) Southern grass;

(SSS) Staphylococcal;

(TTT) Stinging insect mix;

(UUU) Stinging insects;

(VVV) Sweet vernal;

(WWW) Sycamore;

(XXX) Tall ragweed;

(YYY) Timothy;

(ZZZ) Tree mix;

(AAAA) Trees (early spring);

(BBBB) Walnut;

(CCCC) Wasp;

(DDDD) West ragweed;

(EEEE) West weed mix;

(FFFF) Yellow jacket;

(60) Antihemophilic factor, Human;

(61) Antirabies serum;

(62) Antivenin;

(62.05) Apixaban;

(62.1) Apomorphine;

(62.3) Apraclonidine;

(62.4) Aprepitant;

(62.5) Aprotinin;

(62.7) Ardeparin;

(62.75) Arformoterol tartrate;

(62.8) Argatroban;

(63) Arginine, L-;

(63.5) Aripiprazole;

(64) Arsenic — Preparation for human use;

(64.1) Arsenic trioxide;

(65) Artegraft;

(65.5) Artemether;

(66) Ascorbate sodium — Injection;

(66.5) Asenapine;

(67) Asparaginase;

(67.6) Astemizole;

(67.67) Astenajavol;

(67.72) Atazanavir;

(68.1) Atenolol;

(68.15) Atomoxetine;

(68.2) Atorvastatin;

(68.3) Atovaquone;

(68.4) Atracurium besylate;

(68.5) Atropine — See exceptions;

(68.6) Auranofin;

(69) Aurothioglucose;

(69.1) Avanafil;

(69.3) Axitinib;

(69.5) Azacitidine;

(70) Azapetine;

(71) Azatadine maleate;

(72) Azathioprine;

(72.3) Azelaic acid;

(72.4) Azelastine;

(72.43) Azficel-T;

(72.45) Azilsartan;

(72.5) Azithromycin;

(72.7) Azlocillin;

(73) Azo-sulfisoxazole;

(73.5) Aztreonam;

(74) Azuresin;

(75) Bacitracin — See exceptions;

(76) Baclofen;

(76.5) Balsalazide;

(77) Barium — See exceptions;

(77.3) Bazedoxifene;

(77.5) Beclomethasone;

(78) Bedaquiline;

(78.3) Belatacept;

(78.5) Belimumab;

(79) Belladonna;

(80) Belladonna alkaloids;

(81) Belladonna extracts;

(82) Benactyzine;

(82.5) Benazepril;

(82.7) Bendamustine;

(83) Bendroflumethiazide;

(83.1) Benoxaprofen;

(83.2) Bentiromide;

(83.5) Bentoquatam — See exceptions;

(84) Benzestrol;

(85) Benzonatate;

(86) Benzoylpas;

(87) Benzquinamide;

(88) Benzthiazide;

(89) Benztropine;

(90) Benzylpenicilloyl - polylysine;

(91) Bephenium hydroxynaphthoate;

(91.3) Bepotastine;

(91.5) Bepridil;

(91.7) Beractant;

(91.8) Besifloxacin;

(92) Beta-carotene — See exceptions;

(93) Betadine vaginal gel;

(94) Betahistine;

(94.5) Betaine, anhydrous;

(95) Betamethasone;

(95.1) Betaxolol;

(96) Betazole;

(97) Bethanechol;

(97.1) Bethanidine sulfate;

(97.2) Bevacizumab;

(97.3) Bexarotene;

(97.5) Bicalutamide;

(98) Bile extract;

(98.2) Bimatoprost;

(99) Biperiden;

(100) Bisacodyl tannex;

(101) Bishydroxycoumarin;

(101.5) Biskalcitrate;

(102) Bismuth sodium tartrate — See exceptions;

(102.05) Bisoprolol;

(102.1) Bitolterol mesylate;

(102.5) Bivalirudin;

(103) Blastomycine;

(104) Bleomycin;

(104.5) Boceprevir;

(105) Boroglycerin glycerite;

(105.3) Bortezomib;

(105.5) Bosentan;

(105.6) Bosutinib;

(105.7) Botulinum toxin (B);

(106) Botulism antitoxin;

(106.5) Brentuxima vedotin;

(107) Bretylium;

(107.3) Briazolamide;

(107.5) Brimonidine;

(108) Bromelains — See exceptions;

(108.5) Bromfenac;

(109) Bromisovalum;

(110) Bromocriptine;

(111) Bromodiphenhydramine;

(112) Brompheniramine — See exceptions;

(113) Brucella antigen;

(114) Brucella protein nucleate;

(115) Buclizine;

(115.3) Budesonide;

(115.5) Bumetanide;

(116) Bupivacaine;

(116.05) Reserved;

(116.1) Bupropion;

(116.5) Buspirone;

(117) Busulfan;

(118) Butacaine;

(119) Butaperazine;

(119.05) Butenafine — See exceptions;

(119.1) Butoconazole — See exceptions;

(120) Reserved;

(121) Butyl nitrite;

(122) Butyrophenone;

(122.3) Cabazitaxel;

(122.5) Cabergoline;

(122.7) Cabozantinib;

(123) Cadmium sulfide — See exceptions;

(124) Caffeine sodium benzoate;

(124.3) Calcifediol;

(124.7) Calcipotriene;

(125) Calcitonin, Salmon;

(126) Calcitriol;

(127) Calcium disodium edetate — See exceptions;

(128) Calcium gluconogalactogluconate;

(129) Calcium levulinate;

(129.5) Calfactant;

(130) Calusterone;

(130.1) Canagliflozin;

(130.3) Canakinumab;

(130.5) Candesartan;

(131) Candicidin;

(132) Cantharidin;

(132.5) Capecitabine;

(133) Capreomycin;

(133.05) Capsaicin — see exceptions;

(133.1) Captopril;

(134) Capyodiame;

(135) Caramiphen;

(136) Carbachol;

(137) Carbamazepine;

(138) Carbazochrome;

(139) Carbenicillin;

(140) Carbetapentane;

(141) Carbidopa;

(142) Carbinoxamine;

(142.5) Carboplatin;

(142.7) Carfilzomib;

(143) Carglumic Acid;

(144) Carmustine;

(144.1) Carnitine;

(145) Carphenazine;

(145.6) Carteolol;

(145.8) Carvedilol;

(146) Casein hydrolysate;

(146.6) Caspofungin;

(147) Catarrhalis combined vaccine;

(148) Catarrhalis vaccine mixed;

(149) Cefaclor;

(150) Cefadroxil;

(151) Cefamandole;

(151.3) Cefazolin;

(151.4) Cefdinir;

(151.45) Cefditoren;

(151.5) Cefepime;

(151.6) Cefixime;

(151.7) Cefmetazole;

(151.8) Cefonicid;

(152) Cefoperazone;

(152.1) Ceforanide;

(152.2) Cefotaxime;

(152.3) Cefotetan;

(152.7) Cefotiam;

(152.9) Cefoxitin;

(153.1) Cefpiramide;

(153.2) Cefpodoxime;

(153.3) Cefprozil;

(153.35) Ceftaroline;

(153.4) Ceftazidime;

(153.5) Ceftibuten;

(153.6) Ceftizoxime;

(153.8) Ceftriaxone;

(153.9) Cefuroxime;

(153.95) Celecoxib;

(154) Cellulose, Oxadized, Regenerated — See exceptions;

(154.5) Centruroides [Scorpion] Immune;

(155) Cephalexin;

(156) Cephaloglycin;

(157) Cephaloridine;

(158) Cephalothin;

(159) Cephapirin;

(159.3) Cephradine;

(159.6) Ceretec;

(159.8) Cerivastatin;

(160) Certolizumab;

(160.1) Ceruletide;

(160.15) Cetirizine — See exceptions;

(160.16) Cetrorelix;

(160.165) Cetuximab;

(160.17) Cevimeline;

(160.20) Chenodiol;

(161) Chlophedianol;

(162) Chlorambucil;

(163) Chloramphenicol;

(164) Chloranil — See exceptions;

(165) Chlordantoin;

(166) Chlordiazepoxide in combination with clidinium bromide or water soluble esterified estrogens;

(166.5) Chlorhexidine — See exceptions;

(167) Chlormadinone;

(168) Chlormerodrin;

(169) Chlormezanone;

(170) Chloroacetic acid — See exceptions;

(171) Chlorobutanol — See exceptions;

(172) Chloroform — See exceptions;

(173) Chloroguanide;

(174) Chloroprocaine;

(175) Chloroquine;

(176) Chlorothiazide;

(177) Chlorotrianisene;

(178) Chloroxine;

(179) Chlorphenesin;

(180) Chlorpheniramine — See exceptions;

(181) Chlorphenoxamine;

(182) Chlorpromazine;

(183) Chlorpropamide;

(184) Chlorprothixene;

(185) Chlorquinaldol;

(186) Chlortetracycline;

(187) Chlorthalidone;

(188) Chlorzoxazone;

(189) Cholera vaccine;

(190) Cholestyramine resin;

(190.5) Choline C 11;

(191) Chondroitin;

(191.5) Chymopapain;

(192) Chymotrypsin;

(192.02) Ciclesonide;

(192.03) Ciclopirox;

(192.05) Cidofovir;

(192.1) Cilastatin;

(192.4) Cilexetil;

(192.7) Cilostazol;

(193) Cimetidine — See exceptions;

(193.5) Cinacalcet;

(194) Cinoxacin;

(194.5) Ciprofloxacin;

(194.7) Cisapride;

(194.8) Cisatracurium;

(195) Cisplatin;

(195.2) Citalopram;

(195.3) Cladribine;

(195.5) Clarithromycin;

(195.7) Clavulanate;

(196) Clemastine — See exceptions;

(196.5) Clevidipine;

(197) Clidinium bromide;

(198) Clindamycin;

(198.05) Clobazam;

(198.1) Clobetasol propionate;

(199) Clocortolone pivalate;

(200) Clofibrate;

(201) Clomiphene;

(201.5) Clomipramine;

(202) Clonidine;

(203) Clopidogerel;

(204) Clostridiopeptidase;

(205) Clotrimazole — See exceptions;

(206) Cloxacillin;

(206.5) Clozapine;

(207) Coal tar solution topical;

(207.5) Cobicistat;

(208) Cobra venom;

(208.5) Coccidioides immitis;

(209) Colchicine — See exceptions;

(209.5) Colesevelam;

(210) Colestipol;

(211) Colistimethate;

(212) Colistin;

(213) Collagenase;

(213.1) Collagenase clostridium histolyticum;

(213.3) Conivaptan;

(213.5) Corticorelin;

(214) Corticotropin;

(215) Corticotropin, Respository;

(216) Cortisone;

(217) Cosyntropin;

(217.5) Crixivan;

(217.8) Crizotinib;

(217.9) Crofelemer;

(218) Cromolyn — See exceptions;

(219) Crotaline antivenin, Polyvalent;

(220) Crotamiton;

(221) Cryptenamine;

(221.5) Cupric chloride — injectable;

(222) Cyanide antidote;

(223) Cyclacillin;

(224) Cyclandelate;

(225) Reserved;

(226) Cyclobenzaprine;

(227) Cyclomethycaine;

(228) Cyclopentamine;

(229) Cyclopentolate;

(230) Cyclophosphamide;

(231) Cycloserine;

(231.5) Cyclosporine;

(232) Cyclothiazide;

(233) Cycrimine;

(234) Cyproheptadine;

(234.5) Cysteamine;

(235) Cytarabine;

(235.5) Dabigatran;

(235.7) Dabrafenib;

(236) Dacarbazine;

(236.6) Daclizumab;

(237) Dactinomycin;

(237.1) Dalfampridine;

(237.2) Dalfopristin;

(237.5) Dalteparin;

(237.7) Danaparoid;

(238) Danazol;

(239) Dantrolene;

(239.5) Dapiprazole;

(240) Dapsone — See exceptions;

(240.3) Daptomycin;

(240.5) Darbepoetin alfa;

(240.6) Darifenacin;

(240.7) Darunavir;

(240.9) Dasatinib;

(241) Daunorubicin;

(242) Deanol;

(243) Decamethonium;

(243.3) Decitabine;

(243.5) Deferasirox;

(244) Deferoxamine;

(244.4) Degarelix;

(244.5) Delavirdine;

(245) Demecarium;

(246) Demeclocycline;

(247) Demethylchlortetracycline;

(247.7) Denosumab;

(248) Deoxyribonuclease, Pancreatic;

(249) Deserpidine;

(249.5) Desflurane;

(250) Desipramine;

(250.5) Desirudin;

(251) Deslanoside;

(251.5) Desloratadine;

(252) Desmopressin;

(252.5) Desogestrel;

(253) Desonide;

(254) Desoximetasone;

(255) Desoxycorticosterone;

(256) Desoxyribonuclease;

(256.5) Desvenlafaxine;

(257) Dexamethasone;

(258) Dexbrompheniramine — See exceptions;

(259) Dexchlorpheniramine;

(259.5) Dexlansoprazole;

(260) Dexpanthenol;

(260.5) Dexrazoxane;

(261) Dextran;

(262) Reserved;

(263) Dextriferron;

(264) Dextroisoephedrine;

(265) Dextrothyroxine;

(265.5) Dezocine;

(266) Diatrizoate;

(267) Diazoxide;

(268) Dibucaine;

(269) Dichloralphenazone;

(270) Dichlorphenamide;

(270.5) Diclofenac;

(271) Dicloxacillin;

(272) Dicyclomine;

(272.5) Didanosine;

(273) Dienestrol;

(273.5) Dienogest;

(274) Diethylcarbamazine;

(275) Diethylstilbestrol;

(276) Reserved;

(277) Diflorasone diacetate;

(277.5) Diflunisal;

(277.57) Difluprednate;

(278) Digitalis;

(279) Digitoxin;

(280) Digoxin;

(281) Dihydroergocornine;

(282) Dihydroergocristine;

(283) Dihydroergocryptine;

(284) Dihydroergotamine;

(285) Dihydrostreptomycin;

(286) Dihydrotachysterol;

(287) Diiodohydroxyquin;

(287.5) Diltiazem;

(288) Dimenhydrinate — Injection or suppositories;

(289) Dimercaprol;

(290) Dimethindene;

(291) Dimethisterone;

(291.5) Dimethyl fumarate;

(292) Dimethyl sulfoxide — See exceptions;

(293) Dimethyl tubocurarine;

(293.5) Dimyristoyl;

(294) Dinoprost;

(295) Dinoprostone;

(296) Dioxyline;

(297) Diphemanil;

(298) Diphenadione;

(299) Diphenhydramine — See exceptions;

(300) Diphenidol;

(301) Diphenylhydantoin;

(302) Diphenylpyraline;

(303) Diphtheria antitoxin;

(304) Diphtheria and tetanus toxoids;

(305) Diphtheria and tetanus toxoids and pertussis vaccine;

(306) Diphtheria and tetanus toxoids, Absorbed;

(307) Diphtheria and tetanus toxoids, Pertussis;

(308) Diphtheria toxoid;

(309) Dipivefrin;

(310) Dipyridamole;

(311) Dipyron;

(311.3) Dirithromycin;

(311.5) Disibind;

(312) Disodium edetate — See exceptions;

(313) Disopyramide;

(314) Disulfiram;

(314.5) Divalproex;

(315) Dobutamine;

(315.5) Docetaxel;

(315.7) Docosanol — See exceptions;

(316) Doderlein bacilli;

(316.2) Dofetilide;

(316.3) Dolasetron;

(316.4) Dolutegravir;

(316.5) Donepezil;

(317) Dopamine;

(317.2) Doripenem;

(317.3) Dornase Alpha;

(317.4) Dorzolamide;

(317.5) Doxacurium;

(318) Doxapram;

(318.5) Doxazosin mesylate;

(319) Doxepin;

(319.5) Doxercalciferol;

(320) Doxorubicin;

(321) Doxycycline;

(322) Reserved;

(323) Doxylamine succinate;

(324) Dromostanolone;

(324.5) Dronedarone;

(325) Droperidol;

(325.3) Drospirenone;

(325.4) Drotrecogin alfa;

(325.45) Duloxetine;

(325.5) Dutasteride;

(326) Dyclonine;

(327) Dydrogesterone;

(328) Dyphylline;

(328.5) Ecallantide;

(329) Echothiophate;

(329.5) Econazole;

(330) Ectylurea;

(330.3) Eculizumab;

(330.5) Edetate — See exceptions;

(331) Edrophonium;

(331.03) Efavirenz;

(331.05) Eflornithine;

(331.06) Eltrombopag;

(331.065) Elvitegravir;

(331.07) Emedastine;

(331.072) Emtricitabine;

(331.1) Enalapril;

(331.6) Enalaprilat;

(332) Enflurane;

(332.2) Enfuvirtide;

(332.5) Enoxacin;

(332.7) Enoxaparin;

(332.8) Entacapone;

(332.85) Entecavir;

(332.87) Enzalutamide;

(332.9) Epinastine;

(333) Epinephrine;

(334) Epinephryl borate;

(334.3) Epirubicin;

(334.4) Eplerenone;

(334.5) Epoprostenol;

(334.7) Eprosartan;

(334.8) Eptifibatide;

(335) Ergocalciferol — See exceptions;

(335.5) Ergoloid mesylates;

(336) Ergonovine;

(337) Ergotamine;

(338) Ergosine;

(339) Ergocristine;

(340) Ergocryptine;

(341) Ergocornine;

(342) Ergotaminine;

(343) Ergosinine;

(344) Ergocristinine;

(345) Ergocryptinine;

(346) Ergocorninine;

(346.05) Eribulin;

(346.1) Erlotinib;

(346.5) Ertapenem;

(347) Erythrityl tetranitrate;

(348) Erythromycin;

(348.722) Escitalopram;

(349) Eserine;

(349.3) Eslicarbazepine;

(349.4) Esmolol;

(349.7) Esomeprazole — See exceptions;

(350) Esterified estrogens;

(351) Estradiol;

(352) Estriol;

(353) Estrogens;

(354) Estrogenic substances;

(355) Estrone;

(355.5) Estropipate;

(356) Ethacrynate;

(357) Ethacrynic acid;

(358) Ethambutol;

(359) Ethamivan;

(359.5) Ethanolamine oleate;

(360) Ethaverine;

(361) Ether — See exceptions;

(361.5) Ethinamate;

(362) Ethinyl estradiol;

(363) Ethiodized oil;

(364) Ethionamide;

(365) Ethisterone;

(366) Ethoheptazine;

(367) Ethopropazine;

(368) Ethosuximide;

(369) Ethotoin;

(370) Ethoxazene — See exceptions;

(371) Ethoxyzolamide;

(372) Ethyl biscoumacetate;

(373) Ethyl chloride — See exceptions;

(374) Ethyl nitrite spirit;

(375) Reserved;

(376) Ethylnorepinephrine;

(377) Ethynodiol diacetate;

(378) Etidocaine;

(379) Etidronate;

(379.05) Etodolac;

(379.07) Etomidate;

(379.09) Etonogestrel;

(379.1) Etoposide;

(379.5) Etravirine;

(380) Eucatropine;

(380.3) Everolimus;

(380.5) Exemestane;

(380.6) Exenatide;

(380.7) Ezetimibe;

(381) Factor IX complex, Human;

(381.1) Famciclovir;

(381.2) Famotidine — See exceptions;

(381.3) Felbamate;

(381.5) Felodipine;

(381.55) Fenfibrate;

(381.6) Fenofenadine;

(381.7) Fenofibrate;

(381.75) Fenofibric acid;

(381.8) Fenoldopam;

(382) Fenoprofen;

(382.25) Febuxostat;

(383) Ferric cacodylate;

(383.15) Ferric Hexacyanoferrate;

(383.3) Ferumoxides;

(383.4) Ferumoxsil;

(383.43) Ferumoxytol;

(383.45) Fesoterodine;

(383.5) Fexofenadine — See exceptions;

(384) Fibrinogen;

(385) Fibrinogen/antihemophilic factor, Human;

(386) Fibrinolysin, Human;

(386.05) Fidaxomicin;

(386.3) Finasteride;

(386.5) Filgrastin;

(386.7) Fingolimod;

(387) Flavoxate;

(387.1) Flecainide acetate;

(388) Florantyrone;

(388.3) Florbetapir F 18;

(388.5) Flosequinan;

(389) Floxuridine;

(389.5) Fluconazole;

(390) Flucytosine;

(390.5) Fludarabine;

(390.7) Fludeoxyglucose;

(391) Fludrocortisone;

(391.5) Flumazenil;

(392) Flumethasone;

(392.1) Flunisolide;

(393) Fluocinonide;

(394) Fluocinolone;

(395) Fluorescein;

(396) Fluoride — See exceptions;

(396.5) Fluorometholone;

(397) Fluorophosphates;

(398) Fluorouracil;

(399) Fluoxetine;

(399.5) Fluoxymesterone;

(400) Fluphenazine;

(401) Fluprednisolone;

(402) Flurandrenolide;

(402.2) Flurbiprofen;

(402.5) Flutamide;

(402.6) Flutemetamol F18;

(402.7) Fluticasone;

(402.8) Fluvastatin;

(402.9) Fluvoxamine;

(403) Folate sodium;

(404) Folic acid — See exceptions;

(404.3) Follitropin;

(404.5) Fomivirsen;

(404.7) Fondaparinux;

(405) Foreign protein;

(406) Formaldehyde — See exceptions;

(406.2) Formoterol;

(406.3) Fosamprenavir;

(406.35) Fosaprepitant;

(406.4) Foscarnet;

(406.5) Fosfomycin;

(406.7) Fosinopril;

(406.9) Fosphenytoin;

(406.95) Frovatriptan;

(407) Furazolidone;

(408) Furosemide;

(408.2) Gabapentin;

(408.25) Gadobenate;

(408.27) Gadobutrol;

(408.3) Gadodiamide;

(408.35) Gadofosveset;

(408.4) Gadopentetate dimeglumine;

(408.5) Gadoterate meglumine;

(408.6) Gadoteridol;

(408.8) Gadoversetamide;

(408.85) Gadoxetate;

(408.9) Galantamine;

(409) Gallamine triethiodide;

(409.3) Gallium citrate;

(409.5) Gallium nitrate;

(409.8) Galsulfase;

(410) Gamma benzene hexachloride;

(411) Gamma globulin;

(411.5) Ganciclovir;

(411.7) Ganirelix;

(412) Gas gangrene polyvalent antitoxin;

(412.03) Gatifloxacin;

(412.04) Gefitinib;

(412.05) Gemcitabine;

(412.1) Gemfibrozil;

(412.2) Gemifloxacin;

(412.3) Gemtuzumab ozogamicin;

(412.5) Genotropin;

(413) Gentamicin;

(414) Gentian violet vaginal suppositories;

(415) Gitalin;

(415.03) Glatiramer;

(415.05) Glimepiride;

(415.1) Glipizide;

(416) Glucagon;

(416.5) Glucarpidase;

(417) Gluceptate;

(418) Gluconate magnesium;

(419) Gluconate potassium — See exceptions;

(420) Glutamate arginine;

(420.1) Glyburide;

(420.2) Glycerol phenylbutyrate;

(420.5) Glycine — See exceptions;

(421) Glycobiarsol;

(422) Glycopyrrolate;

(423) Gold sodium thiomalate;

(424) Gold thiosulfate — See exceptions;

(424.4) Golimumab;

(425) Gomenol Solution;

(425.5) Gonadorelin acetate;

(426) Gonadotropin, Chorionic;

(427) Gonadotropin, Chorionic, Anti-human serum;

(428) Gonadotropin, Serum;

(428.5) Goserelin;

(429) Gramicidin;

(430) Gramineae pollens;

(430.3) Gramosetron;

(430.5) Granisetron;

(431) Griseofulvin;

(431.5) Guanabenz;

(432) Guanethidine;

(432.4) Guanadrel;

(432.7) Guanfacine;

(432.9) Guanidine;

(433) Halcinonide;

(433.5) Halobetasol Propionate;

(433.7) Halofantrine;

(434) Haloperidol;

(435) Haloprogin;

(436) Halothane;

(437) Hartman's solution;

(438) Heparin;

(439) Hetacillin;

(440) Hexachlorophene — See exceptions;

(441) Hexafluorenium;

(442) Hexocyclium;

(443) Hexylcaine;

(444) Histamine;

(445) Histoplasmin;

(445.5) Histrelin acetate;

(446) Homatropine;

(446.4) Human secretin;

(446.6) Hyaluronan;

(446.7) Hyaluronic acid;

(447) Hyaluronidase;

(448) Hydralazine;

(449) Hydrocalciferol;

(450) Hydrochlorothiazide;

(451) Hydrocortamate;

(452) Hydrocortisone — See exceptions;

(453) Hydroflumethiazide;

(454) Hydroquinone;

(455) Hydroxocobalamin — See exceptions;

(456) Hydroxyamphetamine;

(457) Hydroxychloroquine;

(458) Hydroxyprogesterone;

(459) Hydroxyurea;

(460) Hydroxyzine;

(461) Hyoscyamine;

(462) Hyoscyamus alkaloids;

(463) Hypophamine;

(463.03) Ibandronate;

(463.5) Ibrutinib;

(464) Ibuprofen — See exceptions;

(464.05) Ibutilide;

(464.07) Icatibant;

(464.1) Idarubicin;

(464.3) Idoxuridine;

(464.5) Idursulfase;

(464.6) Ifosfamide;

(464.67) Iloperidone;

(464.7) Iloprost;

(464.8) Imatinib;

(465) Imiglucerase;

(465.1) Imipenem/cilastatin;

(466) Imipramine;

(466.5) Imiquimod;

(467) Immune hepatitis B globulin, Human;

(468) Immune poliomyelitis globulin, Human;

(469) Immune serum globulin, Human;

(469.05) IncobotulinumtoxinA;

(469.07) Indacaterol;

(469.1) Indapamide;

(469.5) Indecainide;

(470) Indigotindisulfonate;

(470.05) Indinavir;

(470.1) Indium IN-III oxyquinolone;

(470.3) Indium IN-III pentetreotide;

(471) Indocyanine green;

(472) Indomethacin;

(472.5) Infliximab;

(473) Influenza virus vaccines;

(473.5) Ingenol mebutate;

(474) Injections, All substances for human use — See exceptions;

(474.2) Insulin aspart;

(474.4) Insulin glargine;

(474.45) Insulin glulisine;

(474.5) Interferon;

(475) Intrinsic factor concentrate manufactured for human use;

(475.3) Inulin;

(475.5) Iobenguane;

(476) Iocetamic acid;

(477) Iodamide;

(478) Iodinated I-125 serum albumin;

(479) Iodinated I-131 serum albumin;

(480) Iodinated glycerol-theophylline;

(481) Iodine solution, Strong oral;

(482) Iodipamide;

(482.5) Iodixanol;

(483) Iodized oil;

(484) Iodobenzoic acid — See exceptions;

(485) Iodobrassid;

(485.1) Iodohippurate sodium;

(486) Iodopyracet;

(487) Iodothiouracil;

(487.05) Iofetamine;

(487.06) Ioflupane;

(487.08) Iohexol;

(487.1) Iopamidol;

(488) Iopanoic acid — See exceptions;

(489) Iophendylate;

(489.1) Iopromide;

(489.2) Iothalamate;

(489.3) Iothiouracil;

(489.5) Iotrolan;

(489.6) Ioversol;

(490.1) Ioxaglate;

(490.5) Ioxilan;

(490.7) Ipilimumab;

(491) Ipodate;

(491.5) Ipratropium;

(491.6) Irbesartan;

(491.7) Irinotecan;

(492) Iron cacodylate;

(493) Iron dextran injection;

(494) Iron peptonized;

(495) Iron sorbitex;

(496) Isocarboxazid;

(497) Isoetharine;

(498) Isoflurane;

(499) Isoflurophate;

(500) Isometheptene;

(501) Isoniazid;

(502) Isopropamide;

(503) Isoproterenol;

(504) Isosorbide dinitrate;

(504.05) Isosorbide mononitrate;

(504.1) Isosulfan blue;

(505) Isothipendyl;

(505.5) Isotretinoin;

(506) Isoxsuprine;

(506.5) Isradipine;

(506.7) Itraconazole;

(506.75) Ivacaftor;

(506.8) Ivermectin;

(506.9) Ixabepilone;

(507) Kanamycin;

(508) Reserved;

(509) Ketocholanic acids;

(509.1) Ketoconazole — See exceptions;

(509.15) Ketoprofen — See exceptions;

(509.17) Ketorolac tromethamine;

(509.18) Ketotifen — See exceptions;

(509.2) Labetalol;

(509.7) Lacosamide;

(510) Lactated ringers solution;

(511) Lactulose;

(511.3) Lamivudine;

(511.5) Lamotrigine;

(512) Lanatoside C;

(512.3) Lanreotide;

(512.5) Lansoprazole — see exceptions;

(512.6) Lanthanum;

(512.67) Lapatinib;

(512.7) Latanoprost;

(513) Latrodectus mactans;

(513.5) Leflunomide;

(513.7) Lenalidomide;

(513.8) Letrozole;

(514) Leucovorin;

(514.1) Leuprolide;

(514.5) Levalbuterol;

(515) Reserved;

(515.5) Levamisole;

(516) Levarterenol;

(516.05) Levetiracetam;

(516.07) Levobetaxolol;

(516.1) Levobunolol;

(516.3) Levobupivacine;

(516.5) Levocabastine;

(516.7) Levocarnitine;

(516.75) Levocetirizine;

(517) Levodopa;

(517.2) Levofloxacin;

(517.25) Levoleucovorin;

(517.3) Levomethadyl;

(517.35) Levomilnacipran;

(517.4) Levonordefrin;

(518) Levopropoxyphene;

(519) Levothyroxine;

(520) Lidocaine — See exceptions;

(520.3) Linaclotide;

(520.5) Linagliptin;

(521) Lincomycin;

(522) Lindane — See exceptions;

(522.5) Linezolid;

(523) Linolenic acid;

(524) Liothyronine;

(525) Liotrix;

(525.2) Liraglutide;

(525.5) Lisinopril;

(526) Lithium carbonate — See exceptions;

(527) Lithium citrate;

(528) Liver extract;

(528.3) Lodoxamide;

(528.5) Lomefloxacin;

(528.7) Lomitapide;

(529) Lomustine;

(529.1) Loperamide — See exceptions;

(529.5) Lopinavir;

(529.7) Loracarbef;

(529.9) Loratadine — See exceptions;

(529.93) Lorcaserin hydrochloride;

(529.95) Losartan;

(529.97) Loteprednol;

(530) Lovastatin;

(530.5) Loxapine;

(530.7) Lubiprostone;

(530.8) Lucinactant;

(531) Lugols solution;

(531.3) Luliconazole;

(531.5) Lumefantrine;

(531.7) Lurasidone;

(532) Lututrin;

(533) Lymphogranuloma venereum antigen;

(534) Lypressin synthetic;

(534.5) Macitentan;

(535) Mafenide;

(536) Magnesium gluconate — See exceptions;

(537) Magnesium salicylate;

(538) Mandelic acid — See exceptions;

(539) Mannitol — See exceptions;

(540) Mannitol hexanitrate;

(540.1) Maprotiline;

(540.3) Maraviroc;

(540.5) Masoprocol;

(541) Measles immune globulin, Human;

(542) Measles virus vaccines;

(543) Mebendazole for human use;

(544) Mecamylamine;

(544.5) Mecasermin;

(545) Mechlorethamine;

(546) Meclizine — See exceptions;

(546.5) Meclocycline;

(547) Meclofenamate;

(548) Medroxyprogesterone;

(549) Medrysone;

(550) Mefenamic acid;

(550.5) Mefloguine;

(551) Megestrol;

(552) Meglumine;

(552.5) Meloxicam;

(553) Melphalan;

(553.5) Memantine;

(554) Menadiol;

(555) Menadione;

(556) Meningococcal polysaccharide vaccine;

(557) Menotropins;

(558) Mepenzolate;

(559) Mephenesin;

(560) Mephentermine;

(561) Mephenytoin;

(562) Meprednisone;

(563) Mepivacaine;

(563.5) Mequinol;

(564) Meralluride;

(565) Mercaptomerin;

(566) Mercaptopurine;

(567) Mercury bichloride — See exceptions;

(567.1) Meropenem;

(567.2) Mersalyl;

(567.3) Mesalamine;

(567.5) Mesna;

(568) Mesoridazine;

(569) Mestranol;

(570) Metaproterenol;

(571) Metaraminol;

(572) Metaxalone;

(572.5) Metformin;

(573) Methacholine;

(574) Methacycline;

(575) Methallenestril;

(576) Reserved;

(577) Reserved;

(578) Methantheline;

(579) Methazolamide;

(580) Methdilazine;

(581) Methenamine hippurate;

(582) Methenamine mandelate;

(583) Methenamine sulfosalicylate;

(584) Methicillin;

(585) Methimazole;

(586) Methiodal;

(587) Methionine;

(588) Methixene;

(589) Methocarbamol;

(590) Methotrexate;

(591) Methotrimeprazine;

(592) Methoxamine;

(593) Methoxsalen;

(594) Methoxyflurane;

(595) Methoxyphenamine;

(595.5) Methoxy polyethylene glycol-epoetin beta;

(596) Methscopolamine;

(597) Methsuximide;

(598) Methyclothiazide;

(599) Methylandrostenediol;

(600) Methylatropine;

(601) Methyldopa;

(602) Methyldopate;

(603) Methylene blue, Oral;

(604) Methylergonovine;

(604.5) Methylnaltrexone;

(605) Methylprednisolone;

(606) Reserved;

(607) Methysergide;

(608) Metoclopramide;

(609) Metocurine iodide injection;

(610) Metolazone;

(611) Metoprolol;

(612) Metrizamide;

(612.5) Metrizoate;

(613) Metronidazole;

(614) Metyrapone;

(615) Metyrosine;

(615.01) Mexiletine;

(615.1) Mezlocillin;

(615.6) Mibefradil;

(615.9) Micafungin;

(616) Miconazole — See exceptions;

(617) Microfibrillar collagen hemostat;

(617.1) Midodrine;

(617.22) Midubosathol;

(617.3) Mifepristone;

(617.4) Miglitol;

(617.44) Miglustat;

(617.47) Milnacipran;

(617.5) Milrinone;

(618) Minocycline;

(619) Minoxidil — See exceptions;

(619.05) Mipomersen;

(619.1) Mirabegron;

(619.3) Mirtazapine;

(619.5) Misoprostol;

(620) Mithramycin;

(621) Mitomycin;

(622) Mitotane;

(622.3) Mitoxantrone;

(622.5) Mivacurium;

(622.7) Moexipril;

(623) Molindone;

(623.5) Mometasone;

(624) Monobenzone;

(624.1) Monooctanoin;

(624.5) Montelukast;

(624.7) Moricizine;

(625) Morrhuate;

(625.1) Moxalactam;

(625.3) Moxidectin;

(625.5) Moxifloxacin;

(626) Mumps virus vaccines;

(626.5) Mupirocin;

(627) Mushroom spores which, when mature, contain either psilocybin or psilocin;

(627.5) Mycophenolate;

(628) N-acetyl-1-cysteine;

(629) N. cattarhalis antigen;

(629.5) Nabumetone;

(630) Nadolol;

(630.5) Nafarelin;

(631) Nafcillin;

(631.5) Naftifine;

(632) Nalbuphine;

(633) Reserved;

(634) Nalidixic acid;

(634.5) Nalmefene;

(635) Naloxone;

(635.1) Naltrexone;

(636) Reserved;

(637) Naphazoline — See exceptions;

(638) Naproxen — See exceptions;

(638.3) Naratriptan;

(638.4) Natalizumab;

(638.45) Nebivolol;

(638.5) Nedocromil;

(638.7) Nefazodone;

(638.75) Nelarabine;

(638.8) Nelfinavir;

(639) Neomycin — See exceptions;

(640) Neostigmine;

(640.1) Nepafenac;

(640.2) Nesiritide;

(640.3) Netilmicin;

(640.4) Nevirapine;

(640.5) Niacinamide — See exceptions;

(640.7) Nicardipine;

(640.8) Niclosamide;

(641.1) Nicotine resin complex (polacrilex) — See exceptions;

(641.15) Nicotine transdermal system — See exceptions;

(642) Nicotinyl alcohol;

(642.1) Nifedipine;

(643) Nifuroximine;

(644) Nikethamide;

(644.3) Nilotinib;

(644.4) Nilutamide;

(644.5) Nimodipine;

(644.7) Nisoldipine;

(644.72) Nitazoxanide;

(644.8) Nitisinone;

(644.9) Nitric oxide — for use in humans;

(645) Nitrofurantoin;

(646) Nitrofurazone;

(647) Nitroglycerin;

(648) Nitroprusside — See exceptions;

(648.3) Nitrous oxide — See exceptions;

(648.6) Nizatidine — See exceptions;

(649.1) Nomifensine maleate;

(650) Nonoxynol — See exceptions;

(651) Norepinephrine;

(652) Norethindrone;

(653) Norethynodrel;

(653.5) Norfloxacin;

(654) Norgestrel;

(655) Normal serum albumin, Human;

(656) Nortriptyline;

(657) Nositol;

(658) Novobiocin;

(659) Nux vomica;

(660) Nylidrin;

(661) Nystatin;

(661.1) Obinutuzumab;

(661.15) Ocilizumab;

(661.3) Ocriplasmin;

(661.5) Octreotide acetate;

(661.6) Ofatumumab;

(661.7) Ofloxacin;

(661.8) Olanzapine;

(662) Old tuberculin;

(663) Oleandomycin;

(663.1) Olmesartan;

(663.2) Olopatadine;

(663.3) Olsalazine Sodium;

(663.35) Omacetaxine mepesuccinate;

(663.4) Omega-3-acid;

(663.5) Omeprazole — See exceptions;

(663.7) Ondansetron;

(663.75) Orlistat — See exceptions;

(664) Orphenadrine;

(665) Orthoiodobenzoic acid;

(665.5) Oseltamivir;

(665.6) Ospemifene;

(665.7) Ovine hyaluronidase;

(666) Oxacillin;

(666.4) Oxaliplatin;

(666.6) Oxamniquine;

(667) Oxaprozin;

(667.5) Oxcarbazepine;

(668) Oxethazaine;

(668.5) Oxiconazole;

(669) Oxolinic acid;

(669.1) Oxprenolol;

(670) Oxtriphylline;

(671) Oxybutynin — see exceptions;

(672) Oxygen for human use — See exceptions;

(673) Reserved;

(674) Oxyphenbutazone;

(675) Oxyphencyclimine;

(676) Oxyphenisatin;

(677) Oxyphenonium;

(678) Oxyquinoline;

(679) Oxytetracycline;

(680) Oxytocin;

(680.5) Ozogamicin;

(681) P-nitrosulfathiazole;

(681.3) Paclitaxel;

(681.4) Palifermin;

(681.45) Paliperidone;

(681.5) Palonosetron;

(681.7) Pamidronate;

(682) Pancreatin dornase;

(683) Pancreatic enzyme;

(684) Pancrelipase;

(685) Pancuronium;

(685.5) Panidronate;

(685.6) Panitumumab;

(685.7) Pantoprazole;

(686) Papaverine;

(687) Paramethadione;

(688) Paramethasone;

(689) Paranitrosulfathiazole;

(690) Parathyroid injection;

(691) Pargyline;

(691.5) Paricalcitol;

(692) Paromomycin;

(692.2) Paroxetine;

(692.25) Pasereotide;

(692.3) Pazopanib;

(692.4) Pegademase bovine;

(692.5) Pegaspargase;

(692.51) Pegfilgrastin;

(692.513) Peginesatide;

(692.515) Peginterferon;

(692.517) Pegloticase;

(692.52) Pegvisomant;

(692.54) Pemetrexed;

(692.55) Pemirolast;

(692.6) Penbutolol;

(692.8) Penciclovir;

(693) Penicillamine;

(694) Penicillin;

(695) Penicillin G;

(696) Penicillin O;

(697) Penicillin V;

(698) Penicillinase;

(699) Pentaerythritol tetranitrate;

(700) Pentagastrin;

(700.1) Pentamidine isethionate;

(701) Pentapiperide;

(701.5) Pentetate calcium trisodium;

(701.7) Pentetate zinc trisodium;

(702) Penthienate;

(703) Pentolinium;

(703.03) Pentosan;

(703.05) Pentostatin;

(703.1) Pentoxifylline;

(703.4) Pentylenetetrazol;

(703.43) Perampanel;

(703.45) Perflexane;

(703.5) Perflubron;

(703.6) Perfluoroalkylpolyether;

(703.65) Perflutren;

(703.7) Pergolide;

(704) Perindopril;

(704.1) Permethrin — See exceptions;

(705) Perphenazine;

(706) Pertussis immune globulin, Human;

(706.5) Pertuzumab;

(707) Phenacemide;

(708) Phenaglycodol;

(709) Phenaphthazine;

(710) Phenazopyridine — See exceptions;

(711) Phenelzine;

(712) Phenethicillin;

(713) Phenformin;

(714) Phenindamine;

(715) Phenindione;

(716) Pheniramine — See exceptions;

(717) Phenitramin;

(718) Phenothiazine derivatives;

(719) Phenoxybenzamine;

(720) Phenoxymethyl penicillin;

(721) Phenuprocoumon;

(722) Phensuximide;

(723) Phentolamine;

(724) Phenylbutazone;

(725) Phenylmercuric acetate;

(726) Phenylmercuric nitrate;

(726.5) Phenylpropanolamine;

(727) Phenyltoloxamine dihydrogen citrate;

(727.2) Phenytoin;

(728) Phthalylsulfacetamide;

(729) Phthalylsulfathiazole;

(730) Physostigmine;

(731) Phytonadione;

(731.1) Pimozide;

(732) Pilocarpine;

(732.3) Pinacidil;

(732.7) Pindolol;

(732.8) Pioglitazone;

(732.9) Pimecrolimus;

(733) Pipazethate;

(733.5) Pipecuronium;

(734) Pipenzolate;

(735) Piperacetazine;

(735.1) Piperacillin;

(736) Piperazine;

(737) Piperidolate;

(738) Piperocaine;

(739) Pipobraman;

(740) Pipradrol;

(740.05) Pirbuterol;

(740.1) Piroxicam;

(740.5) Pitavastatin;

(741) Plague vaccine;

(742) Plasma protein fraction;

(742.3) Plerixafor;

(742.5) Plicamycin;

(743) Pneumococcal polyvalent vaccine;

(743.3) Podofilox;

(743.5) Podophyllotoxin;

(744) Poison ivy extract;

(745) Poison ivy oak extract;

(746) Poison ivy oak, sumac extract;

(747) Poldine methylsulfate;

(747.4) Polidocanol;

(748) Poliomyelitis vaccine;

(749) Poliovirus vaccine, Live, Oral, All;

(750) Polyestradiol;

(751) Polymyxin B — See exceptions;

(751.5) Polytetrafluoroethylene;

(752) Polythiazide;

(752.05) Pomalidomide;

(752.1) Ponatinib;

(752.2) Poractant alfa;

(752.5) Porfimer;

(752.7) Posaconazole;

(753) Posterior pituitary;

(754) Potassium acetate injection;

(755) Potassium acid phosphate — See exceptions;

(756) Potassium p-aminobenzoate — See exceptions;

(757) Potassium aminosalicylate — See exceptions;

(758) Potassium arsenite — See exceptions;

(759) Potassium bicarbonate — See exceptions;

(760) Potassium carbonate — See exceptions;

(761) Potassium chloride — See exceptions;

(762) Potassium citrate — See exceptions;

(763) Potassium gluconate — See exceptions;

(764) Potassium hetacillin;

(765) Potassium iodide — See exceptions;

(766) Reserved;

(767) Potassium permanganate — See exceptions;

(768) Povidone — Iodine — See exceptions;

(768.8) Pralatrexate;

(769) Pralidoxime;

(769.2) Pramipexole;

(769.3) Pramlintide;

(769.35) Prasugrel;

(769.4) Pravastatin;

(769.7) Praziquantel;

(770) Prazosin;

(770.5) Prednicarbate;

(771) Prednisolone;

(772) Prednisone;

(773) Prilocaine;

(774) Primaquine;

(775) Primidone;

(776) Probenecid;

(777) Probucol;

(778) Procainamide;

(779) Procaine;

(780) Procaine penicillin;

(781) Procaine penicillin G;

(782) Procarbazine;

(783) Prochlorperazine;

(784) Procyclidine;

(785) Progesterone;

(785.5) Proguanil;

(786) Promazine;

(787) Promethazine;

(788) Promethestrol;

(788.5) Propafenone;

(789) Propantheline;

(790) Proparacaine;

(791) Prophenpyridamine — See exceptions;

(792) Propiolactone;

(793) Propiomazine;

(794) Propoxycaine;

(795) Propranolol;

(795.5) Propylhexedrine;

(796) Propylparaben;

(797) Propylthiouracil;

(798) Protamine sulfate injection;

(799) Protein hydrolysate injection;

(800) Protein, Foreign injection;

(801) Proteolytic enzyme;

(802) Protirelin;

(803) Protokylol;

(804) Protoveratrine A and B;

(805) Protriptyline;

(805.5) Prussian blue;

(806) Reserved;

(807) Pseudomonas polysaccharide complex;

(808) P-ureidobenzenearsonic acid;

(809) Purified protein derivatives of tuberculin;

(810) Pyrantel;

(811) Pyrazinamide;

(812) Pyrazolon;

(813) Pyridostigmine;

(814) Pyrimethamine;

(815) Pyrrobutamine;

(816) Pyrvinium;

(816.5) Quetiapine;

(817) Quinacrine;

(817.5) Quinapril;

(818) Quinestrol;

(819) Quinethazone;

(820) Quinidine;

(821) Quinine hydrochloride;

(822) Quinine and urea hydrochloride;

(822.3) Quinupristin;

(822.5) Rabeprazole;

(823) Rabies anti-serum;

(824) Rabies immune globulin, Human;

(825) Rabies vaccine;

(826) Radio-iodinated compounds;

(827) Radio-iodine;

(828) Radio-iron;

(829) Radioisotopes;

(830) Radiopaque media;

(831) Ragweed pollen extract;

(831.02) Raloxifene;

(831.03) Raltegravir;

(831.04) Ramelteon;

(831.05) Ramipril;

(831.07) Ranibizumab;

(831.1) Ranitidine — See exceptions;

(831.3) Ranolazine;

(831.5) Rapacuronium;

(831.7) Rasagiline;

(832) Rauwolfia serpentina;

(832.1) Raxibacumab;

(832.2) Reboparhamil;

(832.5) Regadenoson;

(832.7) Regorafenib;

(833) Rescinnamine;

(834) Reserpine;

(835) Reserpine alkaloids;

(836) Resorcinol monoacetate — See exceptions;

(836.3) Retapamulin;

(836.5) Retinoic acid, all-trans;

(837) Rhus toxicodendron antigen;

(838) Rh D immune globulin, Human;

(838.5) Ribavirin;

(839) Riboflavin — See exceptions;

(840) Ricinoleic acid;

(840.5) Rifabutin;

(841) Reserved;

(842) Rifampin;

(842.1) Rifapentine;

(842.15) Rifaximin;

(842.17) Rilonacept;

(842.18) Rilpivirine;

(842.2) Riluzole;

(842.4) Rimantadine;

(842.7) Rimexolone;

(843) Ringer's injection;

(843.1) Riociguat;

(843.2) Risedronate;

(843.3) Risperidone;

(843.7) Ritodrine;

(843.8) Ritonavir;

(843.82) Rituximab;

(843.825) Rivaroxaban;

(843.83) Rivastigmine;

(843.9) Rizatritpan;

(844) Rocky mountain spotted fever vaccine;

(844.5) Rocuronium;

(844.7) Rofecoxib;

(844.75) Roflumilast;

(845) Rolitetracycline;

(845.1) Romidepsin;

(845.15) Romiplostim;

(845.3) Ropinirole;

(845.5) Ropivacaine;

(845.7) Rosiglitazone;

(845.8) Rosuvastatin;

(845.9) Rotavirus vaccine;

(845.95) Rotigotine;

(846) Rotoxamine;

(846.5) RSVIGIV;

(847) Rubella and mumps virus vaccine;

(848) Rubella virus vaccine;

(848.5) Rufinamide;

(849) Rutin — See exceptions;

(849.5) Sacrosidase;

(850) Salicylazosulfapyridine;

(850.5) Salmeterol;

(851) Salmonella typhosa, Killed;

(851.02) Salvinorin A;

(851.03) Samarium SM 153 lexidronam;

(851.04) Saneromazile;

(851.045) Sapropterin;

(851.05) Saquinavir;

(851.1) Saralasin acetate;

(851.7) Saxagliptin;

(852) Scopolamine;

(852.1) Secretin;

(852.6) Selegiline;

(853) Selenium sulfide — See exceptions;

(853.5) Selenomethionine;

(854) Senecio cineraria extract ophthalmic solution;

(855) Senega fluid extract;

(855.3) Seractide acetate;

(855.5) Sermorelin Acetate;

(855.6) Sertaconazole;

(855.7) Sertraline;

(855.74) Sevelamer;

(855.8) Sevoflurane;

(855.85) Sildenafil;

(855.9) Silodosin;

(856) Silver nitrate ophthalmic solutions or suspensions;

(857) Silver sulfadiazine cream;

(857.1) Simeprevir;

(857.3) Simethicone coated cellulose suspension;

(857.5) Simvastatin;

(858) Sincalide;

(858.3) Sinecatechins;

(858.5) Sirolimus;

(858.7) Sitagliptin;

(859) Sitosterols;

(860) Solutions for injections, All;

(861) Smallpox vaccine;

(862) Sodium acetate injection;

(863) Sodium acetrizoate;

(864) Sodium ascorbate injection;

(865) Sodium biphosphate — See exceptions;

(866) Sodium cacodylate;

(867) Sodium chloride injection;

(868) Sodium dehydrocholate;

(869) Sodium dextrothyroxine;

(870) Sodium estrone;

(871) Sodium fluorescein — See exceptions;

(872) Sodium fluoride — See exceptions;

(873) Sodium iothalamate;

(873.5) Sodium nitroprusside;

(873.7) Sodium phenylbutyrate;

(873.8) Sodium picosulfate;

(874) Sodium polystyrene sulfonate;

(875) Sodium propionated vaginal cream;

(876) Sodium sulfacetamide;

(877) Sodium sulfadiazine;

(878) Sodium sulfobromophthalein;

(879) Sodium sulfoxone;

(880) Sodium tetradecyl;

(880.5) Sodium thiosulfate;

(881) Sodium tyropanoate;

(881.03) Sofosbuvir;

(881.05) Solifenacin;

(881.1) Somatrem;

(882) Somatropin;

(882.5) Sorafenib;

(883) Sorbus extract;

(883.5) Sotalol;

(883.8) Sparfloxacin;

(884) Sparteine;

(885) Spectinomycin;

(885.5) Spinosad;

(886) Spirapril;

(887) Spironolactone;

(888) Staphage lysate bacterial antigen;

(889) Staphylococcus and streptococcus vaccine;

(890) Staphylococcus toxoid;

(890.5) Stavudine;

(891) Stibophen;

(892) Stinging insect antigens — Combined;

(893) Stockes expectorant;

(894) Stramonium;

(895) Streptococcus antigen;

(896) Streptokinase-streptodornase;

(897) Streptomycin;

(898) Strontium — See exceptions;

(899) Strophanthin-G;

(900) Strychnine — See exceptions;

(901) Succimer;

(902) Succinylchloline;

(903) Succinylsulfathiazole;

(903.1) Sucralfate;

(903.15) Sucroferric oxyhydroxide;

(903.2) Sulconazole;

(904) Sulfabenzamide vaginal preparations;

(905) Sulfacetamide;

(906) Sulfachlorpyridazine;

(907) Sulfacytine;

(908) Sulfadiazine;

(909) Sulfadimethoxine;

(909.1) Sulfadoxine;

(910) Sulfaethidole;

(911) Sulfaguanidine;

(912) Sulfamerazine;

(913) Sulfameter;

(914) Sulfamethazine;

(915) Sulfamethizole;

(916) Sulfamethoxazole;

(917) Sulfamethoxypyridazine;

(918) Sulfanilamide;

(919) Sulfaphenazole;

(920) Reserved;

(921) Sulfapyridine;

(922) Sulfasalazine;

(922.5) Sulfathiazole;

(923) Sulfinpyrazone;

(924) Sulfisomidine;

(925) Sulfisoxazole;

(926) Sulfur thioglycerol;

(927) Sulindac;

(927.5) Sumatriptan;

(927.7) Sunitinib;

(928) Superinone;

(928.1) Suprofen;

(929) Sutilains;

(930) Syrosingopine;

(930.5) Tacrine;

(930.7) Tacrolimus;

(930.9) Tadalafil;

(930.93) Tafluprost;

(930.97) Tagliglucerase alfa;

(931) Tamoxifen;

(931.1) Tamsulosin;

(931.3) Tazarotene;

(931.35) Tazobacam;

(931.37) Tbo-filgrastim;

(931.5) Technetium;

(931.53) Teduglutide;

(931.55) Tegaserod;

(931.553) Telaprevir;

(931.555) Telavancin;

(931.56) Telbivudine;

(931.57) Telithromycin;

(931.6) Telmisartan;

(931.7) Temafloxacin;

(931.75) Temozolomide;

(931.77) Temsirolimus;

(931.8) Teniposide;

(931.85) Terazosin;

(931.9) Tenofovir;

(931.95) Terbinafine — See exceptions;

(932) Terbutaline;

(932.05) Terconazole;

(932.1) Terfenadine;

(932.2) Teriflunomide;

(932.3) Teriparatide;

(933) Terpin hydrate with codeine;

(934) Reserved;

(935) Tesamorelin;

(936) Tetanus and diphtheria toxoids;

(937) Tetanus antitoxin;

(938) Tetanus immune globulin;

(939) Tetanus toxoids;

(939.5) Tetrabenazine;

(940) Tetracaine;

(941) Tetracycline;

(942) Tetraethylammonium chloride;

(943) Tetrahydrozoline — See exceptions;

(943.5) Thalidomide;

(944) Thallous chloride;

(945) Theobromide;

(945.5) Theobromine;

(946) Theobromine magnesium oleate;

(947) Theophylline — See exceptions;

(948) Theophylline sodium glycinate;

(949) Thiabendazole;

(950) Thiamylal;

(951) Thiethylperazine;

(952) Thiopropazate;

(953) Thioguanine;

(954) Thioridazine;

(955) Thiosalicylate;

(956) Thiotepa;

(957) Thiothixene;

(958) Thiphenamil;

(959) Thrombin;

(960) Thyroglobulin;

(961) Thyroid;

(962) Thyrotropin;

(963) Thyroxine;

(964) Thyroxine fraction;

(964.5) Tiagabine;

(964.7) Ticagrelor;

(965) Ticarcillin;

(965.5) Ticlopidine;

(966) Ticrynafen;

(966.3) Tigecycline;

(966.6) Tiludronate;

(967) Timolol;

(967.1) Tinidazole;

(967.2) Tinzaparin;

(967.3) Tioconazole — See exceptions;

(967.5) Tiopronin;

(967.55) Tiotropium;

(967.57) Tipranavir;

(967.6) Tirofiban;

(967.7) Tizanidine;

(968) Tobramycin;

(968.1) Tocainide;

(969) Tocamphyl;

(969.6) Tocilizumab;

(969.8) Tofacitinib;

(970) Tolazamide;

(971) Tolazoline;

(972) Tolbutamide;

(972.5) Tolcapone;

(973) Tolmetin;

(973.05) Tolterodine;

(973.07) Tolvaptan;

(973.1) Topiramate;

(973.3) Topotecan;

(973.4) Toremifene;

(973.5) Torsemide;

(973.7) Trametinib;

(973.8) Trandolapril;

(973.9) Tranexamic acid;

(974) Tranylcypromine;

(974.4) Travoprost;

(974.5) Trazodone;

(974.7) Treprostinil;

(975) Tretinoin;

(976) Triamcinolone;

(977) Triamterene;

(978) Trichlormethiazide;

(979) Trichloroacetic acid — See exceptions;

(980) Trichloroethylene — See exceptions;

(981) Trichlobisonium;

(982) Triclofos;

(983) Tridihexethyl chloride;

(983.1) Trientine;

(984) Triethanolamine polypeptides;

(985) Triethylenethiophosphoramide;

(986) Trifluoperazine;

(987) Triflupromazine;

(988) Trifluridine;

(989) Trihexyphenidyl;

(990) Triiodothyronine;

(990.1) Trilostane;

(991) Trimeprazine;

(992) Trimethadione;

(993) Trimethaphan cansylate;

(994) Trimethobenzamide;

(995) Trimethoprim;

(995.5) Trimetrexate;

(996) Trimipramine;

(997) Triolein;

(998) Trioxsalen;

(999) Tripelennamine — See exceptions;

(1000) Triphenyltetrazolium;

(1001) Triple sulfas;

(1002) Triprolidine — See exceptions;

(1002.5) Triptorelin;

(1003) Trisulfapyrimidines;

(1003.5) Troglitazone;

(1004) Troleandomycin;

(1005) Trolnitrate;

(1006) Tromethamine;

(1007) Tropicamide;

(1007.3) Trospium;

(1007.5) Trovafloxacin;

(1008) Trypsin;

(1009) Trypsin-chymotrypsin;

(1010) Tuaminoheptane;

(1011) Tuberculin, Purified protein derivatives;

(1012) Tuberculin tine test;

(1013) Tuberculin, Old;

(1014) Tubocurarine;

(1015) Tybamate;

(1016) Typhoid and paratyphoid vaccine;

(1017) Typhus vaccine;

(1018) Tyropanoate;

(1018.5) Ulipristal;

(1019) Undecoylium;

(1019.5) Unoprostone;

(1020) Uracil;

(1021) Urea — See exceptions;

(1021.3) Urofollitropin;

(1021.5) Ursodiol;

(1021.6) Ustekinumab;

(1021.7) Valacyclovir;

(1021.8) Valdecoxib;

(1022) Valethamate;

(1022.2) Valganciclovir;

(1023) Valproate;

(1024) Valproic acid — See exceptions;

(1024.3) Valrubicin;

(1024.5) Valsartan;

(1025) Vancomycin;

(1025.2) Vandetanib;

(1025.5) Vardenafil;

(1025.7) Varenicline;

(1026) Vasopressin;

(1027) VDRL antigen;

(1027.1) Vecuronium bromide;

(1027.3) Velaglucerase;

(1027.5) Velnacrine;

(1027.55) Vemuranfenib;

(1027.6) Venlafaxine;

(1027.7) Verapamil;

(1028) Veratrum viride;

(1029) Versenate;

(1029.5) Verteporfin;

(1030) Vidarabine;

(1030.3) Vigabatrin;

(1030.4) Vilanterol;

(1030.5) Vilazodone;

(1031) Vinblastine;

(1032) Vincristine;

(1032.5) Vinorelbine;

(1033) Vinyl ethyl — See exceptions;

(1034) Viomycin;

(1034.5) Vismodegib;

(1035) Vitamin K;

(1036) Vitamin B12 injection;

(1037) Vitamine with fluoride;

(1037.5) Voriconazole;

(1037.7) Vorinostat;

(1037.8) Vortioxetine;

(1038) Warfarin;

(1039) Wargarin;

(1039.1) Xylocaine;

(1040) Yellow fever vaccine;

(1041) Yohimbine;

(1042) 4-chloro-3, 5-xylenol — See exceptions;

(1042.01) Zafirlukast;

(1042.02) Zalcitabine;

(1042.03) Zanamivir;

(1042.05) Zidovudine;

(1042.4) Zileuton;

(1042.7) Zinc acetate — See exceptions;

(1042.75) Ziprasidone;

(1042.78) Ziv-aflibercept;

(1042.8) Zoledronic Acid;

(1042.9) Zolmitriptan;

(1042.92) Zonisamide;

(1043) Devices that require a prescription:

(A) Cellulose, Oxadized, Regenerated (surgical absorbable hemostat) — See exceptions;

(B) Diaphragms for vaginal use;

(C) Hemodialysis solutions;

(D) Hemodialysis kits;

(E) Lippes loop intrauterine;

(F) Saf-T-Coil intrauterine device;

(G) Intrauterine devices, All;

(H) Absorbable hemostat;

(I) Gonorrhea test kit.

(c) The following are exceptions to and exemptions from subsection (b) of this Code section:

(1) Atropine sulfate — where the oral dose is less than 1/200 gr. per unit;

(2) Bacitracin cream or ointment for topical use;

(3) Belladonna or belladonna alkaloids when in combination with other drugs and the dosage unit is less than 0.1 mg. of the alkaloids or its equivalent;

(3.5) Bentoquatam — when used with a strength of 5 percent or less in topical preparations;

(4) Beta carotene — all forms occurring in food products or lotions;

(5) Bromelain, pancreatic enzymes, trypsin and bile extract — when labeled properly as digestive aids with appropriate dosage and in compliance with FDA labeling and restrictions;

(6) Brompheniramine — where a single dosage unit is 4 mg. or less but with no more than 3 mg. of the dextrorotary optical isomer of racemic brompheniramine per released dose;

(6.2) Butenafine — when used with a strength of 1 percent or less as a topical preparation;

(6.4) Butoconazole — when used with a strength up to 2 percent in a vaginal preparation;

(6.45) Capsaicin — when in an external analgesic with concentration of 0.25 percent or less;

(6.5) Cetirizine — when a single dosage unit is either 1mg per 1ml or less or 10mg or less;

(6.7) Chlorhexadine — when used with a strength up to 4 percent in a topical skin product;

(7) Chlorpheniramine — where a single dosage unit is 12 mg. or less;

(7.1) Cimetidine — when a single dosage unit is 200 mg. or less;

(7.3) Clemastine — where a single dose is 1.34 mg. or less;

(7.5) Clotrimazole — when a single vaginal insert is 200 mg. or less or with a strength up to 2 percent in a topical skin, topical vaginal, or vaginal product;

(7.8) Cromolyn — when used as cromolyn sodium in a nasal solution of 4 percent or less in strength;

(7.9) Dexbrompheniramine — when a single dosage unit is 6 mg. or less;

(8) Diphenhydramine — up to 12.5 mg. in each 5 cc's when used in cough preparations and up to 50 mg. per single dose when used as a nighttime sleep aid or used as an antihistamine and labeled in compliance with FDA requirements;

(8.5) Docosanol — when used in 10 percent topical preparation to treat fever blisters, cold sores, or fever blisters and cold sores.

(9) Doxylamine succinate — where a single dosage form is 25 mg. or less and when labeled to be used as a nighttime sedative;

(9.3) Edetate — when used in any form other than an oral or parenteral;

(9.4) Esomeprazole — when a single dosage unit is 20 mg. or less;

(9.5) Famotidine — when a single dosage unit is 20 mg. or less;

(9.6) Fexofenadine — when packaged for distribution as an over-the-counter (OTC) drug product;

(9.7) Fluoride — when used with a strength up to 1,500 parts per million in an oral care or dentifrice product;

(9.8) Glycine — when used with a strength up to 1.5 percent in an irrigation solution, when used in a topical skin product;

(10) Hydrocortisone topical skin preparations up to 1.0 percent in strength;

(11) Hydroxocobalamin, riboflavin, niacinamide, ergocalciferol (maximum of 400 I.U. per day), Folic acid (maximum of 0.4 mg. per day), and magnesium gluconate — when as a source of vitamins and dietary supplement but must bear such labels and adhere to such restrictions of FDA regulations;

(11.1) Ibuprofen — where a single dose is 200 mg. or less;

(11.6) Reserved;

(12) Insulin — all injectable products which do not require a prescription drug order and bear a label which indicates "Rx Use Only" or are otherwise listed under subsection (b) of this Code section; and no injectable insulin product may be sold except by a pharmacy issued a permit by the State Board of Pharmacy or by a medical practitioner authorized to dispense medications;

(12.3) Ketoconazole — when used with a strength of 1 percent or less in topical preparations;

(12.5) Ketoprofen — when a single dosage unit is 12.5 mg. or less;

(12.7) Ketotifen — when used with a strength of 0.025 percent or less in an ophthalmic solution;

(12.9) Lansoprazole — when a single dosage unit is 15 mg. or less;

(13) Lidocaine topical ointment, 25 mg./gm. or less;

(13.5) Loperamide — where a single dose is either 1 mg. per 5 ml. or 2 mg. per dosage unit;

(13.7) Loratadine — when used in a single dose of 10 mg. or less, including doses used in combination with other drugs provided for under this subsection;

(14) Meclizine — 25 mg. or less;

(14.1) Miconazole — when used as antifungal powder or cream, or both, and containing not more than 4 percent of miconazole, or when used as a vaginal insert and containing not more than 1,200 mg. of miconazole;

(14.2) Minoxidil — when used with a strength of 5 percent or less in topical preparations;

(14.3) Naphazoline — when used in an ophthalmic solution in a concentration of 0.027 percent or less in combination with a pheniramine concentration of 0.315 percent or less;

(14.5) Naproxen — where a single dosage unit is 220 mg. or less;

(15) Neomycin sulfate ointment or cream for topical use;

(15.5) Nicotine resin complex (polacrilex) — when used as oral chewing gum where a single dose (piece of gum) is 4 mg. or less;

(15.55) Nicotine transdermal system — when used in a strength of 21 mg. or less per transdermal patch (transdermal delivery system);

(16) Nitrous oxide — air products suppliers shall not sell medical grade nitrous oxide to other than licensed practitioners or medical suppliers; industrial grade nitrous oxide shall only be sold when mixed with not less than 100 parts per million of sulfur dioxide and used as a fuel additive for combustion engines or when used in industrial laboratory equipment;

(16.3) Nizatidine — when a single dosage unit is 75 mg. or less;

(16.8) Nonoxynol — when used with a strength up to 12.5 percent or 1 gram per dose in a vaginal product;

(16.9) Omeprazole — when a single dosage unit is 20.6 mg. or less;

(16.95) Orlistat — when a single dosage unit is 60 mg. or less;

(16.97) Oxybutynin — when a single dose is delivered as 3.9 mg. per day using a transdermal system patch;

(17) Oxygen — compressed oxygen which is not labeled "CAUTION: Federal law prohibits dispensing without prescription" or similar wording;

(17.3) Permethrin — when used as a topical preparation in a strength of 1 percent or less;

(17.5) Phenazopyridine — where a single dose is 100 mg. or less, as approved by the federal Food and Drug Administration;

(18) Pheniramine — when the oral dose is 25 mg. or less, or when used in an ophthalmic solution in a concentration of 0.315 percent or less in combination with a naphazoline concentration of 0.027 percent or less;

(19) Polymyxin B when in combination with other drugs in an ointment or cream for topical use;

(20) Any potassium electrolyte when manufactured for use as a dietary supplement, food additive for industrial, scientific, or commercial use, or when added to other drug products when the product is not intended as a potassium supplement but must bear such labels and adhere to such restrictions of FDA regulations;

(21) Povidone — Iodine solutions and suspensions;

(22) Reserved;

(23) Reserved;

(23.5) Ranitidine — when a single dosage unit is 150 mg. or less;

(24) Rutin — where the dosage unit is less than 60 mg.;

(25) Selenium sulfide suspension 1 percent or less in strength;

(25.1) Strychnine — when used in combination with other active ingredients in a rodent killer, and when not bearing a label containing the words "CAUTION: Federal law prohibits dispensing without prescription" or other similar wording;

(25.5) Terbinafine — when used with a strength of 1 percent or less in a topical antifungal cream;

(26) Tetrahydrozoline for ophthalmic or topical use;

(27) Theophylline preparations alone or in combination with other drugs prepared for and approved for OTC (over the counter) sale by FDA; example — tedral tablets (plain) or oral suspension;

(27.5) Tioconazole — when used with a strength of 1 percent or less in topical preparations or when used with a strength of 6.5 percent or less in vaginal preparations;

(28) Tripelennamine cream or ointment for topical use;

(28.5) Triprolidine — when a single dose is 5 mg. or less when combined in the same preparation as one or more other drug products for use as an antihistamine or decongestant or an antihistamine and decongestant;

(29) Urea — except when the manufacturer's label contains the wording "CAUTION: Federal law prohibits dispensing without prescription" or similar wording;

(29.5) Zinc acetate — when used in topical preparations;

(30) Any drug approved by FDA for animal use and the package does not bear the statement "CAUTION: Federal law prohibits dispensing without prescription" or similar wording; or

(31) Loperamide Oral Liquid (1.00 mg/5.00 ml).

(d) The following list of compounds or preparations may be purchased without a prescription, provided the products are manufactured for industrial, scientific, or commercial sale or use, unless they are intended for human use or contain on the label "CAUTION: Federal law prohibits dispensing without prescription" or similar wording:

(1) Aminosalicylate;

(2) Aminosalicylate calcium;

(3) Aminosalicylate potassium;

(4) Aminosalicylate sodium;

(5) Aminosalicylic acid;

(6) Barium;

(7) Beta-carotene;

(8) Bismuth sodium tartrate;

(9) Cadmium sulfide;

(10) Calcium disodium edetate;

(11) Cellulose, Oxadized, Regenerated;

(12) Chlorabutanol;

(13) Chloranil;

(14) Chloroacetic acid;

(15) Chloroform;

(16) Colchicine;

(17) Dapsone;

(18) Dimethyl sulfoxide;

(19) Disodium edetate;

(20) Edetate disodium;

(21) Ether;

(22) Ethoxazene;

(23) Ethyl chloride;

(24) Fluoride;

(25) Formaldehyde;

(26) Gold thiosulfate;

(27) Hexachlorophene;

(28) Iodobenzoic acid;

(29) Iopanoic acid;

(30) Lindane;

(31) Lithium carbonate;

(32) Mandelic acid;

(33) Mannitol;

(34) Mercury bichloride;

(35) Nitroprusside;

(36) Potassium aminosalicylate;

(37) Potassium p-aminobenzoate;

(37.5) Potassium perchlorate;

(38) Potassium permanganate;

(39) Resorcinol monoacetate;

(40) Selenium sulfide;

(41) Sodium biphosphate;

(42) Sodium fluorescein;

(43) Sodium fluoride;

(44) Strontium;

(45) Trichloroacetic acid;

(46) Trichloroethylene;

(47) Valproic acid;

(48) Vinyl ether;

(49) 4-chloro-3, 5-xylenol.

(e) The State Board of Pharmacy may delete drugs from the dangerous drug list set forth in this Code section. In making such deletions the board shall consider, with respect to each drug, the following factors:

(1) The actual or relative potential for abuse;

(2) The scientific evidence of its pharmacological effect, if known;

(3) The state of current scientific knowledge regarding the drug;

(4) The history and current pattern of abuse, if any;

(5) The scope, duration, and significance of abuse;

(6) Reserved;

(7) The potential of the drug to produce psychic or physiological dependence liability; and

(8) Whether such drug is included under the Federal Food, Drug, and Cosmetic Act, 52 Stat. 1040 (1938), 21 U.S.C. Section 301, et seq., as amended. (Code 1933, § 79A-702, enacted by Ga. L. 1967, p. 296, § 1; Ga. L. 1972, p. 948, § 1; Ga. L. 1976, p. 631, § 1; Ga. L. 1978, p.

1668, § 5; Ga. L. 1979, p. 859, § 3; Ga. L. 1980, p. 1746, § 2; Ga. L. 1981, p. 557, § 2; Ga. L. 1982, p. 3, § 16; Ga. L. 1982, p. 2403, §§ 3-8, 20; Ga. L. 1983, p. 3, § 13; Ga. L. 1983, p. 349, §§ 3-6; Ga. L. 1984, p. 22, § 16; Ga. L. 1984, p. 1019, §§ 3-5; Ga. L. 1985, p. 1219, §§ 8, 9; Ga. L. 1986, p. 1555, §§ 6, 7; Ga. L. 1987, p. 261, § 7; Ga. L. 1989, p. 233, §§ 7, 8; Ga. L. 1990, p. 640, §§ 2, 3; Ga. L. 1991, p. 312, § 2; Ga. L. 1992, p. 6, § 16; Ga. L. 1992, p. 1131, §§ 5-7; Ga. L. 1993, p. 590, §§ 4-7; Ga. L. 1994, p. 169, §§ 6, 7; Ga. L. 1994, p. 849, § 1; Ga. L. 1996, p. 356, §§ 3-5; Ga. L. 1997, p. 1311, §§ 6-10; Ga. L. 1998, p. 778, §§ 3-6; Ga. L. 1999, p. 81, § 16; Ga. L. 1999, p. 643, §§ 2-5; Ga. L. 2000, p. 1317, §§ 4-6; Ga. L. 2001, p. 816, §§ 4-6; Ga. L. 2003, p. 349, §§ 8-11; Ga. L. 2004, p. 488, §§ 4-7; Ga. L. 2005, p. 1028, §§ 2, 3/SB 89; Ga. L. 2006, p. 219, §§ 3-5/HB 1054; Ga. L. 2007, p. 47, § 16/SB 103; Ga. L. 2007, p. 605, §§ 3-5/HB 286; Ga. L. 2008, p. 169, §§ 6, 7, 8/HB 1090; Ga. L. 2009, p. 126, § 5/HB 368; Ga. L. 2010, p. 860, §§ 5, 6, 7/SB 353; Ga. L. 2010, p. 905, § 1/HB 1021; Ga. L. 2011, p. 656, §§ 7-10/SB 93; Ga. L. 2012, p. 40, § 5/SB 370; Ga. L. 2013, p. 71, §§ 3, 4, 5/HB 302; Ga. L. 2014, p. 217, §§ 6, 7/HB 835; Ga. L. 2014, p. 866, § 16/SB 340.)

The 2012 amendment, effective March 27, 2012, added paragraphs (b)(14.5), (b)(17.3), (b)(17.7), (b)(72.43), (b)(72.45), (b)(78.3), (b)(78.5), (b)(104.5), (b)(106.5), (b)(154.5), (b)(198.05), (b)(208.5), (b)(217.8), (b)(386.05), (b)(408.27), (b)(464.07), (b)(469.07), (b)(487.06), (b)(490.7), (b)(520.5), (b)(842.18), (b)(843.825), (b)(844.75), (b)(885.5), (b)(931.553), (b)(964.7), (b)(1025.2), (b)(1027.55), and (b)(1030.5).

The 2013 amendment, effective April 18, 2013, added paragraphs (b)(.042), (b)(12.5), (b)(62.05), (b)(69.1), (b)(69.3), (b)(77.5), (b)(105.6), (b)(122.7), (b)(142.7), (b)(190.5), (b)(207.5), (b)(217.9), (b)(331.065), (b)(332.87), (b)(388.3), and (b)(416.5); substituted "Chorionic" for "Chroinic" in paragraphs (b)(426) and (b)(427); added paragraphs (b)(473.5), (b)(506.75), (b)(520.3), (b)(528.7), (b)(529.93), (b)(530.8), (b)(619.1), and (b)(661.3); inserted "— see exceptions" in paragraph (b)(671); added paragraphs (b)(663.35), (b)(692.25), (b)(692.513), (b)(703.43), (b)(706.5), (b)(752.1), (b)(832.1), (b)(832.7), (b)(873.8), (b)(930.93), (b)(930.97), (b)(931.37), (b)(931.53), (b)(932.2), (b)(969.8), (b)(1034.5), and (b)(1042.78); added paragraph (c)(16.97); and substituted "Tetrahydrozoline" for "Tetrahydrozaline" in paragraph (c)(26).

The 2014 amendments. — The first 2014 amendment, effective April 15, 2014, substituted "Reserved" for "Doxylamine" in paragraph (b)(322); added "— See exceptions" to the end of paragraph (b)(349.7); substituted "Trametinib" for "Tramadol" in paragraph (b)(973.7); added paragraphs (b)(16.5), (b)(17.1), (b)(22.3), (b)(77.3), (b)(130.1), (b)(235.7), (b)(291.5), (b)(316.4), (b)(349.3), (b)(402.6), (b)(408.5), (b)(420.2), (b)(463.5), (b)(517.35), (b)(531.3), (b)(534.5), (b)(619.05), (b)(661.1), (b)(661.15), (b)(665.6), (b)(752.05), (b)(843.1), (b)(857.1), (b)(881.03), (b)(903.15), (b)(1030.4), and (b)(1037.8); and added paragraph (c)(9.4). The second 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, arranged the paragraphs in this Code section in alphabetical order.

Cross references. — Schools authorized to stock supply of auto-injectable epinephrine, § 20-2-776.2.

Editor's notes. — Ga. L. 2012, p. 40, § 1/SB 370, not codified by the General Assembly, which provides for the annual update of the identity of controlled substances and dangerous drugs, is dedicated

to the memory of Chase Corbitt Burnett and shall be known and may be cited as "Chase's Law."

16-13-75. Drugs to be kept in original container; exception.

JUDICIAL DECISIONS

Search and seizure; pill box not immediately identifiable as contraband. — State failed to prove that an officer's opening of a pill container found in the defendant's pocket was justified based on consent when the defendant only consented to the removal of the pill box from the defendant's pocket, and the box was not immediately identifiable as contraband. The defendant's convictions on controlled substances charges were reversed. McCormack v. State, 325 Ga. App. 183, 751 S.E.2d 904 (2013).

CHAPTER 14

RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

Sec.
16-14-3. Definitions.

16-14-1. Short title.

JUDICIAL DECISIONS

Standing. — In a case arising from a settlement and release agreement in which an insured appealed a district court's entry of summary judgment in favor of a former insurer because the insured could not show the purported conspiracy harmed the insured in any cognizable manner, the insured did not have standing for a conspiracy claim under Georgia's RICO Act, O.C.G.A. § 16-14-1 et seq. Rosen v. Am. Guar. & Liab. Ins. Co., No. 11-16176, 2013 U.S. App. LEXIS 529 (11th Cir. Jan. 9, 2013) (Unpublished).

Statute of limitations violated. — Defendant's convictions for theft by conversion and a RICO violation were reversed because the state failed to carry the state's burden to prove that the defendant was indicted on the counts within the applicable statutes of limitation as the evidence showed that the victims, and therefore the state, had actual knowledge of the offenses more than five years prior to the June 12, 2009 indictment, and the state produced no evidence or argument to the contrary. Jannuzzo v. State, 322 Ga. App. 760, 746 S.E.2d 238 (2013).

Action against land bank grantee failed. — Developer's Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., claim against a grantee of property from the Land Bank failed. Even taking all the allegations of bribery, fraudulent statements, and other misdeeds as true, the developer was a mere applicant for a grant of the property so the developer could not show direct harm from the Land Bank's transfer of the property to the grantee instead. Tribeca Homes, LLC v. Marathon Inv. Corp., 322 Ga. App. 596, 745 S.E.2d 806 (2013).

Failure to establish claims upon which racketerring claims were predicated.

Mortgage borrower failed to state a claim against a loan servicer under Georgia's Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq.; the borrower failed to plead any predicate act with the required specificity. Stroman v. Bank of Am. Corp., 852 F. Supp. 2d 1366 (N.D. Ga. 2012).

In a case arising from a settlement and release agreement in which an insured appealed a district court's entry of summary judgment in favor of a former insurer, because the insured was unable to create a genuine issue of material fact that the insurer had the lesser intent to commit civil fraud, it followed that the insured was also unable to create a genuine issue of material fact that the insurer had the intent to commit any predicate acts under Georgia's RICO Act, O.C.G.A. § 16-14-1 et seq. Rosen v. Am. Guar. & Liab. Ins. Co., No. 11-16176, 2013 U.S. App. LEXIS 529 (11th Cir. Jan. 9, 2013) (Unpublished).

Cited in Cox v. Mayan Lagoon Estates Ltd., 319 Ga. App. 101, 734 S.E.2d 883 (2012); Harper v. State, 292 Ga. 557, 738 S.E.2d 584 (2013).

16-14-3. Definitions.

As used in this chapter, the term:

(1) "Alien corporation" means a corporation organized under laws other than the laws of the United States or the laws of any state of the United States.

(2)(A) "Beneficial interest" means either of the following:

(i) The interest of a person as a beneficiary under any other trust arrangement pursuant to which a trustee holds legal or record title to real property for the benefit of such person; or

(ii) The interest of a person under any other form of express fiduciary arrangement pursuant to which any other person holds legal or record title to real property for the benefit of such person.

(B) "Beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in either a general partnership or limited partnership. A beneficial interest shall be deemed to be located where the real property owned by the trustee is located.

(3) "Civil proceeding" means any civil proceeding commenced by an investigative agency under any provision of this chapter.

(4) "Criminal proceeding" means any criminal proceeding commenced by an investigative agency under any provision of this chapter.

(5) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonorecord, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(6) "Enterprise" means any person, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity; or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental as well as other entities.

(7) "Investigative agency" means the Department of Law or the office of any district attorney.

(8) "Pattern of racketeering activity" means:

(A) Engaging in at least two acts of racketeering activity in furtherance of one or more incidents, schemes, or transactions that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such acts occurred after July 1, 1980, and that the last of such acts occurred within four years, excluding any periods of imprisonment, after the commission of a prior act of racketeering activity; or

(B) Engaging in any one or more acts of domestic terrorism as described in subsection (a) of Code Section 16-4-10 or any criminal attempt, criminal solicitation, or criminal conspiracy related thereto.

(9)(A) "Racketeering activity" means to commit, to attempt to commit, or to solicit, coerce, or intimidate another person to commit any crime which is chargeable by indictment under the following laws of this state:

(i) Article 2 of Chapter 13 of this title, relating to controlled substances;

(ii) Article 3 of Chapter 13 of this title, known as the "Dangerous Drugs Act";

(iii) Subsection (j) of Code Section 16-13-30, relating to marijuana;

(iv) Article 1 of Chapter 5 of this title, relating to homicide;

(v) Article 2 of Chapter 5 of this title, relating to bodily injury and related offenses;

(vi) Articles 3 and 4 of Chapter 7 of this title, relating to arson and destructive devices, respectively;

(vii) Code Section 16-7-1, relating to burglary, or Code Section 16-7-2, relating to smash and grab burglary;

(viii) Code Section 16-9-1, relating to forgery in any degree;

(ix) Article 1 of Chapter 8 of this title, relating to theft;

(x) Article 2 of Chapter 8 of this title, relating to robbery;

(xi) Code Sections 16-6-9 through 16-6-12 and 16-6-14, relating to prostitution and pandering;

(xii) Code Section 16-12-80, relating to distributing obscene materials;

(xiii) Code Section 16-10-2, relating to bribery;

(xiv) Code Section 16-10-93, relating to influencing witnesses;

(xv) Article 4 of Chapter 10 of this title and Code Sections 16-10-20, 16-10-20.1, 16-10-23, and 16-10-91, relating to perjury and other falsifications;

(xvi) Code Section 16-10-94, relating to tampering with evidence;

(xvii) Code Section 16-12-22, relating to commercial gambling;

(xviii) Code Section 3-3-27, relating to distilling or making liquors;

(xix) Part 2 of Article 4 of Chapter 11 of this title, known as the "Georgia Firearms and Weapons Act";

(xx) Code Section 16-8-60, relating to unauthorized transfers and reproductions of recorded material;

(xxi) Chapter 5 of Title 10, relating to violations of the "Georgia Uniform Securities Act of 2008";

(xxii) Code Section 3-3-27, relating to the unlawful distillation, manufacture, and transportation of alcoholic beverages;

(xxiii) Code Sections 16-9-31, 16-9-32, 16-9-33, and 16-9-34, relating to the unlawful use of financial transaction cards;

(xxiv) Code Section 40-3-90, relating to certain felonies involving certificates of title, security interest, or liens concerning motor vehicles;

(xxv) Code Section 40-4-21, relating to removal or falsification of identification numbers;

(xxvi) Code Section 40-4-22, relating to possession of motor vehicle parts from which the identification has been removed;

(xxvii) Code Section 16-9-70, relating to use of an article with an altered identification mark;

(xxviii) Article 6 of Chapter 9 of this title, known as the "Georgia Computer Systems Protection Act";

(xxix) Any conduct defined as "racketeering activity" under 18 U.S.C. Section 1961 (1)(A), (B), (C), and (D);

(xxx) Article 3 of Chapter 5 of this title, relating to kidnapping, false imprisonment, and related offenses, except for Code Section 16-5-44, relating to aircraft hijacking;

(xxxi) Code Section 16-11-37, relating to terroristic threats and acts;

(xxxii) Code Section 16-5-44.1, relating to motor vehicle hijacking;

(xxxiii) Code Section 16-10-32, relating to tampering with witnesses, victims, or informants;

(xxxiv) Code Section 16-10-97, relating to intimidation of grand or trial juror or court officer;

(xxxv) Article 11 of Chapter 1 of Title 7 and Sections 5311 through 5330 of Title 31 of the United States Code relating to records and reports of currency transactions;

(xxxvi) Article 8 of Chapter 9 of this title, relating to identity fraud, and Section 1028 of Title 18 of the United States Code, relating to fraudulent identification documents and information;

(xxxvii) Code Section 33-1-9, relating to insurance fraud;

(xxxviii) Code Section 16-17-2, relating to payday loans;

(xxxix) Code Section 16-9-101, relating to deceptive commercial e-mail;

(xl) Code Section 16-8-102, relating to residential mortgage fraud; or

(xli) Code Section 16-5-5, relating to assisted suicide.

(B) "Racketeering activity" shall also mean any act or threat involving murder, kidnapping, gambling, arson, robbery, theft, receipt of stolen property, bribery, extortion, obstruction of justice, dealing in narcotic or dangerous drugs, or dealing in securities which is chargeable under the laws of the United States or any of the several states and which is punishable by imprisonment for more than one year.

(10) "Real property" means any real property situated in this state or any interest in such real property, including, but not limited to, any lease of or mortgage upon such real property.

(11) "RICO lien notice" means the notice described in Code Section 16-14-13.

(12)(A) "Trustee" means either of the following:

(i) Any person who holds legal or record title to real property for which any other person has a beneficial interest; or

(ii) Any successor trustee or trustees to any of the foregoing persons.

(B) "Trustee" does not include the following:

(i) Any person appointed or acting as a guardian or conservator under Title 29, relating to guardian and ward, or personal representative under former Chapter 6 of Title 53 as such existed on December 31, 1997, relating to the administration of estates, if applicable, or Chapter 6 of Title 53 and other provisions in Chapter 1 through 11 of Title 53, the "Revised Probate Code of 1998," relating to the administration of estates; or

(ii) Any person appointed or acting as a trustee of any testamentary trust or as trustee of any indenture of trust under which any bonds are or are to be issued. (Code 1933, § 26-3402, enacted by Ga. L. 1980, p. 405, § 1; Ga. L. 1982, p. 1385, §§ 2, 8; Ga. L. 1983, p. 3, § 13; Ga. L. 1984, p. 22, § 16; Ga. L. 1989, p. 14, § 16; Ga. L. 1990, p. 8, § 16; Ga. L. 1994, p. 1625, § 4; Ga. L. 1996, p. 416, § 8; Ga. L. 1998, p. 128, § 16, Ga. L. 1998, p. 270, § 7; Ga. L. 1999, p. 81, § 16; Ga. L. 2001, p. 858, § 1; Ga. L. 2002, p. 551, § 3; Ga. L. 2002, p. 1284, § 3; Ga. L. 2003, p. 387, § 1; Ga. L. 2004, p. 60, § 2; Ga. L. 2004, p. 161, § 4; Ga. L. 2005, p. 199, § 5/SB 62; Ga. L. 2005, p. 848, § 3/SB 100; Ga. L. 2006, p. 69, § 2/HB 804; Ga. L. 2008, p. 381, § 9/SB 358; Ga. L. 2010, p. 1147, § 8/HB 1104; Ga. L. 2011, p. 59, § 1-64/HB 415; Ga. L. 2011, p. 752, § 16/HB 142; Ga. L. 2012, p. 90, § 2/HB 997; Ga. L. 2012, p. 637, § 2/HB 1114; Ga. L. 2012, p. 899, § 8-6/HB 1176.)

The 2012 amendments. — The first 2012 amendment, effective July 1, 2012, inserted "16-10-20.1," in the middle of division (9)(A)(xv). The second 2012 amendment, effective May 1, 2012, deleted "or" at the end of division (9)(A)(xxxix); substituted "; or" for the period at the end of division (9)(A)(xl); and added division (9)(A)(xli). See editor's note for applicability. The third 2012 amendment, effective July 1, 2012, substituted "any degree" for "the first degree" in division (9)(A)(viii). See editor's note for applicability.

Editor's notes. — Ga. L. 2012, p. 637, § 4/HB 1114, not codified by the General Assembly, provides that: "This Act shall not apply to any offense committed before the effective date of this Act." This Act became effective May 1, 2012.

Ga. L. 2012, p. 899, § 9-1(a)/HB 1176, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2012, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2012, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides

for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act."

Law reviews. — For article, "Crimes and Offenses," see 27 Ga. St. U.L. Rev. 209 (2011). For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 278 (2012). For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012).

JUDICIAL DECISIONS

Federal jurisdiction.

Under the look-through rule, a hypothetical coercive claim was the basis for federal jurisdiction over petitioner bank's Federal Arbitration Act petition, but petitioner payday loan companies' arbitration petition was precluded by a related underlying state court judgment holding the companies in contempt and, striking the companies' arbitration defenses under O.C.G.A. § 9-11-37(b)(2) to respondent borrower's suit alleging violations of Georgia's usury statute, O.C.G.A. § 7-4-1 et seq.; Georgia's Industrial Loan Act, O.C.G.A. § 7-3-1 et seq.; and Georgia's Racketeer Influenced and Corrupt Organizations statute, O.C.G.A. § 16-14-1 et seq. Cmty. State Bank v. Strong, 651 F.3d 1241 (11th Cir. 2011), cert. denied, U.S. , 133 S. Ct. 101, 184 L. Ed. 2d 22 (2012).

Predicate acts under RICO not shown.

Trial court did not err in granting a seller summary judgment on purchasers' RICO claim based on mail fraud because any injury was not proximately caused by the alleged misrepresentations of the seller but by the purchasers' decision to go forward with the purchase despite knowledge of the facts as to which the purchasers were supposedly misled; multiple transactions arising out of a pattern of racketeering activity were not alleged, only the sale of a single townhome unit to the purchasers. Pollman v. Swan, 314 Ga. App. 5, 723 S.E.2d 290 (2011).

Former employee's Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., claim, alleging the former employer was defrauding customers and engaging in racial discrimination, failed because there was no evidence the employee was injured by the commission of any predicate acts, and despite the employee's apparent argument to the contrary, racial discrimination was not listed under O.C.G.A. § 16-14-3(9) as a predicate act. Giles v. BellSouth Telecomms., Inc., No. 13-10145, 2013 U.S. App. LEXIS 20231 (11th Cir. Oct. 3, 2013) (Unpublished).

District court did not err by granting the company summary judgment on the probationer's Georgia RICO claim because the company produced three sworn statements asserting that the two letters demanding payment and threatening the probationer's arrest were sent because of a clerical error and not with the intent to deceive the probationer into paying money the probationer did not owe. The probationer failed to allege or present any evidence that an employee of the company acted with specific intent to commit theft by deception. McGee v. Sentinel Offender Servs., LLC, 719 F.3d 1236 (11th Cir. 2013).

Nexus between predicate acts and injuries. — Trial court erred when the court denied a motion to dismiss employees' Georgia Racketeer Influenced and Corrupt Organizations Act (RICO), O.C.G.A. § 16-14-1 et seq., claims against the employees' former employer and a former supervisor when the allegations of the employees' complaint showed the employees could not satisfy the proximate cause element of a civil RICO claim and lacked standing to bring the allegations because there was no direct nexus between the predicate acts directed at third parties (which included fraud, forgery, and money laundering) and the employees' injuries (the loss of the employees' jobs). Wylie v. Denton, 323 Ga. App. 161, 746 S.E.2d 689 (2013).

Civil forfeiture action. — Trial court did not err in issuing interlocutory injunctions and continuing receiverships over store property seized pursuant to O.C.G.A. § 16-14-7 based on alleged video

gambling activity in violation of O.C.G.A. § 16-12-22 and racketeering activity under O.C.G.A. § 16-14-3(8) and (9). Remand was required, however, for consideration of whether the forfeitures were excessive fines in violation of U.S. Const., amend. VIII. Patel v. State, 289 Ga. 479, 713 S.E.2d 381 (2011).

Cited in Jannuzzo v. State, 322 Ga. App. 760, 746 S.E.2d 238 (2013).

16-14-4. Prohibited activities.

JUDICIAL DECISIONS

Analysis

General Consideration

Predicate acts.

Former employee's Georgia Racketeer Influenced and Corrupt Organizations Act claim, alleging the former employer was defrauding customers and engaging in racial discrimination, failed because there was no evidence the employee was injured by the commission of any predicate acts, and despite the employee's apparent argument to the contrary, racial discrimination was not listed under O.C.G.A. § 16-14-3(9) as a predicate act. Giles v. BellSouth Telecomms., Inc., No. 13-10145, 2013 U.S. App. LEXIS 20231 (11th Cir. Oct. 3, 2013) (Unpublished).

Statute of limitations five years.

Defendant's convictions for theft by conversion and a RICO violation were reversed because the state failed to carry the state's burden to prove that the defendant was indicted on the counts within the applicable statutes of limitation as the evidence showed that the victims, and therefore the state, had actual knowledge of the offenses more than five years prior to the June 12, 2009 indictment, and the state produced no evidence or argument to the contrary. Jannuzzo v. State, 322 Ga. App. 760, 746 S.E.2d 238 (2013).

Cited in Hill v. State, 315 Ga. App. 833, 729 S.E.2d 1 (2012); Cox v. Mayan Lagoon Estates Ltd., 319 Ga. App. 101, 734 S.E.2d 883 (2012).

Application

2. Companies and Employees

Nexus between predicate acts and employees' injuries. — Trial court erred when the court denied a motion to dismiss employees' Georgia Racketeer Influenced and Corrupt Organizations Act (RICO), O.C.G.A. § 16-14-1 et seq., claims against the employees' former employer and a former supervisor when the allegations of the employees' complaint showed the employees could not satisfy the proximate cause element of a civil RICO claim and lacked standing to bring the allegations because there was no direct nexus between the predicate acts directed at third parties (which included fraud, forgery, and money laundering) and the employees' injuries (the loss of the employees' jobs). Wylie v. Denton, 323 Ga. App. 161, 746 S.E.2d 689 (2013).

Employee falsifying overtime. — Evidence that the defendant conspired with other employees to falsify overtime records in exchange for payment by the employees, including both direct evidence of the defendant's unlawful acts, corroborated by non-accomplice witnesses, as well as a recording of the defendant's own incriminating statement, was sufficient to support the defendant's conviction for violating the Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-4(a). Brown v. State, 321 Ga. App. 198, 739 S.E.2d 118 (2013).

16-14-5. Criminal penalties for violation of Code Section 16-14-4.

JUDICIAL DECISIONS

Cited in Hill v. State, 315 Ga. App. 833, 729 S.E.2d 1 (2012).

16-14-6. Available civil remedies.

Law reviews. — For article, "Overcoming Under-Compensation and Under-Deterrence in Intentional Tort Cases: Are Statutory Multiple Damages the Best Remedy?," see 62 Mercer L. Rev. 449 (2011).

JUDICIAL DECISIONS

Constitutionality. — Trial court's dismissal of the claims against the in personam defendant was reversed because since the equitable remedies allowed by O.C.G.A. § 16-14-6(a) were available to other aggrieved parties as well as to the state, an action for such remedies was uncharacteristic of a criminal matter. As such, such a claim was not unconstitutional. State v. Singh, 291 Ga. 525, 731 S.E.2d 649 (2012).

Forfeiture. — Trial court properly allowed only individual members of a class to assert their claims against forfeited funds or property because the members were trying to use the property or funds forfeited in the Georgia Racketeer Influenced and Corrupt Organizations (RICO) Act, O.C.G.A. § 16-14-1 et seq., proceeding as a recovery "superfund" for their federal class action claims; the members cited no authority supporting the members' contention that a federally certified class in a federal class action case had to be considered to be an "injured person," as that term was used in RICO, O.C.G.A. § 16-14-6(d), in proceedings instituted under a state RICO forfeiture provision. Smith v. Cisco, 316 Ga. App. 871, 730 S.E.2d 583 (2012), cert. denied, No. S12C1922, 2012 Ga. LEXIS 976 (Ga. 2012).

While the Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-6(d), allows an injured person to intervene and to make a claim to the forfeited property and that claim is superior to that of the state, there is nothing in the statute that gives injured persons the right to dictate to the state which property should be forfeited to the state; thus, nothing in the statute prevents the state from making a "unilateral decision" concerning which property it will pursue in the forfeiture proceedings. Smith v. Cisco, 316 Ga. App. 871, 730 S.E.2d 583 (2012), cert. denied, No. S12C1922, 2012 Ga. LEXIS 976 (Ga. 2012).

Sufficiency of complaint.

Former employee's Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., claim, alleging the former employer was defrauding customers and engaging in racial discrimination, failed because there was no evidence the employee was injured by the commission of any predicate acts, and despite the employee's apparent argument to the contrary, racial discrimination was not listed under O.C.G.A. § 16-14-3(9) as a predicate act. Giles v. BellSouth Telecomms., Inc., No. 13-10145, 2013 U.S. App. LEXIS 20231 (11th Cir. Oct. 3, 2013) (Unpublished).

Estoppel to contest liability following criminal conviction. — Trial court erred in denying an investor's motion for partial summary judgment as to the business person's liability on the investor's civil Georgia Racketeer Influenced and Corrupt Organization Act (RICO), O.C.G.A. § 16-14-1 et seq., claim against the business person because the business person's criminal conviction estopped the business person from contesting civil liability pursuant to RICO, O.C.G.A.

§ 16-14-6(c). Cox v. Mayan Lagoon Estates Ltd., 319 Ga. App. 101, 734 S.E.2d 883 (2012).

Cited in Austin v. Bank of Am., N.A., 293 Ga. 42, 743 S.E.2d 399 (2013).

16-14-7. Forfeiture proceedings.

JUDICIAL DECISIONS

Temporary injunction.

Trial court did not err in issuing interlocutory injunctions and continuing receiverships over store property seized pursuant to O.C.G.A. § 16-14-7 based on alleged video gambling activity in violation of O.C.G.A. § 16-12-22 and racketeering activity under O.C.G.A. § 16-14-3(8) and (9). Remand was required, however, for consideration of whether the forfeitures were excessive fines in violation of U.S. Const., amend. VIII. Patel v. State, 289 Ga. 479, 713 S.E.2d 381 (2011).

Seizure of gambling equipment and proceeds. — As expressly stated in a subsequently adopted statute, O.C.G.A. § 16-1-12, Georgia public policy prohibited a special assistant district attorney appointed in a forfeiture action under O.C.G.A. § 16-14-7(a), from being compensated on a contingency basis by a percentage of the assets recovered, as creating an impermissible conflict of interest. Amusement Sales, Inc. v. State of Ga., 316 Ga. App. 727, 730 S.E.2d 430 (2012).

Forfeiture. — Trial court did not err by finding that customers lacked standing to participate in the state's decision-making process or negotiations concerning which property would be forfeited because pursuant to RICO, O.C.G.A. § 16-14-7, it was the state, and only the state, acting through the appropriate district attorney, that had the right to institute and prosecute forfeiture proceedings, and the property was specifically forfeited to the state, not to the injured or aggrieved person or persons. Smith v. Cisco, 316 Ga. App. 871, 730 S.E.2d 583 (2012), cert. denied, No. S12C1922, 2012 Ga. LEXIS 976 (Ga. 2012).

16-14-8. Period of limitations as to criminal or civil proceedings under this chapter.

JUDICIAL DECISIONS

Tolling of statute.

Trial court erred by applying O.C.G.A. § 17-3-2.2 to the RICO and theft charges against defendants because it was necessary for the state to show that the victim was over 65 years of age, was the principal stockholder of the corporation, was the owner of the property allegedly stolen, not the corporation, to determine the date the crime became known to the victim. Harper v. State, 292 Ga. 557, 738 S.E.2d 584 (2013).

Criminal prosecution time barred. — Defendant's convictions for theft by conversion and a RICO violation were reversed because the state failed to carry the state's burden to prove that the defendant was indicted on the counts within the applicable statutes of limitation as the evidence showed that the victims, and therefore the state, had actual knowledge of the offenses more than five years prior to the June 12, 2009 indictment, and the state produced no evidence or argument to the contrary. Jannuzzo v. State, 322 Ga. App. 760, 746 S.E.2d 238 (2013).

CHAPTER 15

STREET GANG TERRORISM AND PREVENTION

16-15-1. Short title.

JUDICIAL DECISIONS

Evidence sufficient for conviction. — Evidence was sufficient to convict the defendant of aggravated assault and a violation of the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., because various gang members including the defendant's brother and their associate were on the dance floor flashing gang hand signs and dancing roughly, purposefully bumping into other club patrons, and an altercation ensued; the defendant's brother struck the victim in the back of the victim's head with a beer bottle; the defendant's associate and several others struck the victim and punched the victim in the head; when the victim walked toward the exit door, the defendant hit the victim across the face with a bottle; and the victim was taken by ambulance to a hospital. Dowdell v. State, 325 Ga. App. 593, 754 S.E.2d 383 (2014).

Evidence insufficient for conviction. — Conviction for violation of the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., was reversed because there was no evidence beyond the bandanas and a notebook to link the juveniles to membership in a criminal street gang. To sustain a conviction, the state had to prove that the criminal gang activity or plans for its continuation was ongoing at the time of the commission of the indicted offenses; in other words, the commission of an enumerated offense by the juveniles was not itself sufficient to prove the existence of a criminal street gang. In the Interest of A. G., 317 Ga. App. 165, 730 S.E.2d 187 (2012).

Evidence was not sufficient to support the defendant's conviction for violation of the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., because the state failed to adduce any evidence that the defendant was associated with a gang or that the aggravated assault was intended in any way to further the interests of a gang. No witnesses testified that the defendant was in a gang or that those accompanying the defendant were members of a gang, and no evidence was presented that the defendant or any of the defendant's accomplices displayed gang symbols or colors on the day of the incident or at any other time. Jones v. State, 292 Ga. 656, 740 S.E.2d 590 (2013).

Charge did not omit nexus between violence and gang activity. — With regard to the defendant's convictions for aggravated assault and gang-related crimes, the trial court did not commit plain error with regard to the court's jury instructions because the trial court correctly stated the law by using the statutory language in the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-4(a), in the court's charge to the jury, so the charge did not omit a nexus between the violence, and it was not possible for the jury to convict the defendant without finding that nexus. Skinner v. State, 318 Ga. App. 217, 733 S.E.2d 506 (2012).

16-15-3. Definitions.

JUDICIAL DECISIONS

Charge did not omit nexus between violence and gang activity. — With regard to the defendant's convictions for aggravated assault and gang-related

crimes, the trial court did not commit plain error with regard to the court's jury instructions because the trial court correctly stated the law by using the statutory language in the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-4(a), in the court's charge to the jury, so the charge did not omit a nexus between the violence, and it was not possible for the jury to convict the defendant without finding that nexus. Skinner v. State, 318 Ga. App. 217, 733 S.E.2d 506 (2012).

Gang activity evidence sufficient. On a charge of criminal street gang activity, the state was properly allowed to admit videotapes seized from the defendants' home that were made two years earlier as the videotapes depicted gang-related images and activities; the videotapes were relevant to show the existence of the gang and the defendants' affiliation with the gang. Sifuentes v. State, 293 Ga. 441, 746 S.E.2d 127 (2013).

Gang activity evidence insufficient. — State failed to establish that a "criminal street gang" was involved in a battery for purposes of O.C.G.A. § 16-15-4(a). The investigating officer's testimony merely established that the juveniles were members of gangs, not the gangs' activities, and therefore was insufficient to show that the gangs were involved in criminal gang activity. In the Interest of A. D., 311 Ga. App. 384, 715 S.E.2d 787 (2011).

Conviction for violation of the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., was reversed because there was no evidence beyond the bandanas and a notebook to link the juveniles to membership in a criminal street gang. To sustain a conviction, the state had to prove that the criminal gang activity or plans for the gang's continuation was ongoing at the time of the commission of the indicted offenses; in other words, the commission of an enumerated offense by the juveniles was not itself sufficient to prove the existence of a criminal street gang. In the Interest of A. G., 317 Ga. App. 165, 730 S.E.2d 187 (2012).

Cited in In the Interest of L. P., 324 Ga. App. 78, 749 S.E.2d 389 (2013).

16-15-4. Participation in criminal gang activity prohibited.

JUDICIAL DECISIONS

Evidence sufficient for conviction. Evidence was sufficient to support the defendant's convictions for felony murder, aggravated assault, possession of a firearm during the commission of a crime, and participation in criminal street gang activity. The defendant and fellow gang members walked toward a group of teenagers in a front yard while yelling and making gang signals; the defendant fired once into the crowd, killing the victim, who was unarmed; and the defendant, who fled the scene, was the only person who fired a weapon and was identified to police as the shooter by witnesses who knew the defendant by name. Jackson v. State, 291 Ga. 25, 727 S.E.2d 120 (2012).

Testimony that the defendant was a member of a gang and that the defendant touted that affiliation with the gang to two of the victims a few weeks earlier, permitted the jury to find that the defendant was a member of a street gang and supported the defendant's conviction for participating in criminal street-gang activity. Jones v. State, 318 Ga. App. 26, 733 S.E.2d 72 (2012).

Evidence including testimony as to the gang's criminal activities, corroborating the defendant's participation in the armed robberies; the defendant's admission to participating in two murders; and a gun the defendant used in the attempted armed robbery of the first victim was sufficient to support the defendant's convictions for criminal street gang activity, criminal attempt to commit armed robbery, two counts of aggravated assault, and possession of a firearm during the commission of a felony. Morris v. State, 322 Ga. App. 682, 746 S.E.2d 162 (2013).

Evidence that the defendant admitted to associating with a gang; the defendant referenced gangs on a Facebook page associated with the defendant's street name; the defendant possessed a firearm, the

defendant was found near the residence of the suspected shooter shortly after the shooting; and that gang members were often sought to retaliate for prior acts of violence supported the conviction for participation in criminal gang activity. In the Interest of L. P., 324 Ga. App. 78, 749 S.E.2d 389 (2013).

Evidence insufficient for conviction.

State failed to establish that a "criminal street gang" was involved in a battery for purposes of O.C.G.A. § 16-15-4(a). The investigating officer's testimony merely established that the juveniles were members of gangs, not the gangs' activities, and therefore was insufficient to show that the gangs were involved in criminal gang activity. In the Interest of A. D., 311 Ga. App. 384, 715 S.E.2d 787 (2011).

Conviction for violation of the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., was reversed because there was no evidence beyond the bandanas and a notebook to link the juveniles to membership in a criminal street gang. To sustain a conviction, the state had to prove that the criminal gang activity or plans for the gang's continuation was ongoing at the time of the commission of the indicted offenses; in other words, the commission of an enumerated offense by the juveniles was not itself sufficient to prove the existence of a criminal street gang. In the Interest of A. G., 317 Ga. App. 165, 730 S.E.2d 187 (2012).

Evidence of gang activity.

Gang-related evidence was admissible because the defendants were charged with engaging in criminal street gang activity under O.C.G.A. § 16-15-4; moreover, even though the statements of gang activity placed the defendants' character in issue, the statements were admissible as res gestae of the crimes of gang activity and aggravated assault and battery. Morey v. State, 312 Ga. App. 678, 719 S.E.2d 504 (2011), cert. denied, No. S12C0451, 2012 Ga. LEXIS 592 (Ga. 2012).

On a charge of criminal street gang activity, the state was properly allowed to admit videotapes seized from the defendants' home that were made two years earlier as the videotapes depicted gang-related images and activities; the videotapes were relevant to show the existence of the gang and the defendants' affiliation with the gang. Sifuentes v. State, 293 Ga. 441, 746 S.E.2d 127 (2013).

Charge did not omit nexus between violence and gang activity. — With regard to the defendant's convictions for aggravated assault and gang-related crimes, the trial court did not commit plain error with regard to the court's jury instructions because the trial court correctly stated the law by using the statutory language in the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-4(a), in the court's charge to the jury, so the charge did not omit a nexus between the violence, and it was not possible for the jury to convict the defendant without finding that nexus. Skinner v. State, 318 Ga. App. 217, 733 S.E.2d 506 (2012).

Sentence not void. — Defendant's 10-year sentence for violation of the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., and aggravated assault was not void as the sentence fell within the range of permitted sentences and, thus, did not amount to a punishment that the law did not allow. Garza v. State, 325 Ga. App. 505, 753 S.E.2d 651 (2014).

CHAPTER 16

FORFEITURE OF PROPERTY USED IN BURGLARY, ARMED ROBBERY, OR HOME INVASION

16-16-1. Definitions.

As used in this chapter, the term:

(1) "Armed robbery" means the offense defined in subsection (a) of Code Section 16-8-41.

(2) "Burglary" means the offense defined in Code Section 16-7-1 in any degree.

(3) "Home invasion" means the offense defined in Code Section 16-7-5 in any degree. (Code 1981, § 16-16-1, enacted by Ga. L. 1995, p. 1051, § 4; Ga. L. 2012, p. 899, § 8-7/HB 1176; Ga. L. 2014, p. 426, § 7/HB 770.)

The 2012 amendment, effective July 1, 2012, substituted "Code Section 16-7-1 in any degree" for "subsection (a) of Code Section 16-7-1" in paragraph (2). See editor's note for applicability.

The 2014 amendment, effective July 1, 2014, added paragraph (3).

Editor's notes. — Ga. L. 2012, p. 899, § 9-1(a)/HB 1176, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2012, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2012, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act."

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012).

16-16-2. Forfeiture.

(a) All motor vehicles, tools, and weapons which are used or intended for use in any manner in the commission of or to facilitate the commission of a burglary, home invasion, or armed robbery shall be subject to forfeiture under this chapter, but:

(1) No motor vehicle used by any person as a common carrier in the transaction of business as a common carrier shall be subject to forfeiture under this Code section unless it appears that the owner or other person in charge of the motor vehicle is a consenting party or privy to the commission of a burglary, home invasion, or armed robbery;

(2) No motor vehicle shall be subject to forfeiture under this Code section by reason of any act or omission established by the owner thereof to have been committed or omitted without his or her knowledge or consent, and any co-owner of a motor vehicle without knowledge of or consent to the act or omission shall be protected to the extent of the interest of such co-owner; and

(3) A forfeiture of a motor vehicle encumbered by a bona fide security interest shall be subject to the interest of the secured party

if he or she neither had knowledge of nor consented to the act or omission.

Notwithstanding any provisions of this Code section to the contrary, any firearm forfeited under this chapter shall be disposed of in accordance with the provisions of Code Section 17-5-52.

(b) Property subject to forfeiture under this chapter may be seized by any law enforcement officer of this state or any political subdivision thereof who has the power to make arrests upon process issued by any court having jurisdiction over the property. Seizure without process or warrant may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter; or

(3) If probable cause exists that the vehicle, tool, or weapon is subject to seizure.

(c) Property taken or detained under this Code section shall not be subject to replevin but is deemed to be in the custody of the superior court wherein the seizure was made or in custody of the superior court where it can be proven that the burglary, home invasion, or armed robbery was committed, subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, law enforcement officers seizing such property shall:

(1) Place the property under seal;

(2) Remove the property to a place designated by the judge of the superior court having jurisdiction over the forfeiture as set out in this subsection; or

(3) Deliver such property to the sheriff or police chief of the county in which the seizure occurred, and the sheriff or police chief shall take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(d) When property is seized under this chapter, the sheriff or law enforcement officer seizing the same shall report the fact of seizure, within 20 days thereof, to the district attorney of the judicial circuit having jurisdiction in the county where the seizure was made. Within 60 days from the date he or she receives notice of the seizure, the district attorney of the judicial circuit shall cause to be filed in the superior court of the county in which the property is seized or detained an in rem complaint for forfeiture of such property as provided for in

this Code section. The proceedings shall be brought in the name of the state by the district attorney of the circuit in which the property was seized, and the complaint shall be verified by a duly authorized agent of the state in a manner required by the law of this state. The complaint shall describe the property, state its location, state its present custodian, state the name of the owner, if known to the duly authorized agent of the state, allege the essential elements of the violation upon which the forfeiture is based, and shall conclude with a prayer of due process to enforce the forfeiture. Upon the filing of such a complaint, the court shall promptly cause process to issue to the present custodian in possession of the property described in the complaint, commanding him or her to seize the property described in the complaint and to hold that property for further order of the court. A copy of the complaint shall be served on the owner or lessee, if known. A copy of the complaint shall also be served upon any person having a duly recorded security interest in or lien upon that property. If the owner or lessee is unknown or resides out of the state or departs the state or cannot after due diligence be found within the state or conceals himself or herself so as to avoid service, notice of the proceedings shall be published once a week for two weeks in the newspaper in which the sheriff's advertisements are published. Such publication shall be deemed notice to any and all persons having an interest in or right affected by such proceeding and from any sale of the property resulting therefrom but shall not constitute notice to any person having a duly recorded security interest in or lien upon such property and required to be served under this Code section unless that person is unknown or resides out of the state or departs the state or cannot after due diligence be found within the state or conceals himself or herself to avoid service. An owner of or interest holder in the property may file an answer asserting a claim against the property in the action in rem. Any such answer shall be filed within 30 days after the service of the summons and complaint. Where service is made by publication and personal service has not been made, an owner or interest holder shall file an answer within 30 days of the date of final publication. An answer must be verified by the owner or interest holder under penalty of perjury. In addition to complying with the general rules applicable to an answer in civil actions, the answer must set forth:

(1) The caption of the proceedings as set forth in the complaint and the name of the claimant;

(2) The address at which the claimant will accept mail;

(3) The nature and extent of the claimant's interest in the property;

(4) The date, identity of transferor, and circumstances of the claimant's acquisition of the interest in the property;

(5) The specific provision of this Code section relied on in asserting that the property is not subject to forfeiture;

(6) All essential facts supporting each assertion; and

(7) The precise relief sought.

If at the expiration of the period set forth in this subsection no answer has been filed, the court shall order the disposition of the seized property as provided for in this Code section. If an answer is filed, a hearing must be held within 60 days after service of the complaint unless continued for good cause and must be held by the court without a jury. If the court determines that a claimant defending the complaint knew or by the exercise of ordinary care should have known that the property was to be used for an unlawful purpose subjecting it to forfeiture under this chapter, the court shall order the disposition of the seized property as provided in this Code section and that claimant shall have no claim upon the property or proceeds from the sale thereof.

(e)(1) When property is forfeited under this chapter, the judge of the superior court in the county where the seizure was made or in the county in which it can be proven that the burglary, home invasion, or armed robbery was committed may dispose of the property by issuing an order to:

(A) Retain it for official use by any agency of this state or any political subdivision thereof;

(B) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including but not limited to the expenses of seizure, maintenance of custody, advertising, and court costs; or

(C) Require the sheriff or police chief of the county in which the seizure occurred to take custody of the property and remove it for disposition in accordance with law.

(2)(A) Money, currency, or proceeds which are realized from the sale or disposition of forfeited property shall after satisfaction of the interest of secured parties and after payment of all costs vest in the local political subdivision whose law enforcement officers seized it. If the property was seized by a municipal law enforcement agency then the money, currency, or proceeds realized from the sale or disposition of the property shall vest in that municipality. If the property was seized by a county law enforcement agency, then the money, currency, or proceeds realized from the sale or disposition of the property shall vest in that county. If the property was seized by joint action of a county law enforcement agency and a municipal law enforcement agency, then the money, currency, or proceeds realized from the sale or disposition of the property shall vest in that county and that municipality and shall be divided equally

between the county and municipality. If the property was seized by a state law enforcement agency, then the money, currency, or proceeds realized from the sale or disposition of the property shall vest in the county where the condemnation proceedings are filed. Except as otherwise provided in subparagraph (B) of paragraph (1) of this subsection for payment of all costs, the local government in which the money, currency, or proceeds realized from the forfeited property vests shall expend or use such funds or proceeds received for any official law enforcement purpose except for the payment of salaries or rewards to law enforcement personnel, at the discretion of the chief officer of the local law enforcement agency, or to fund victim-witness assistance programs. Such property shall not be used to supplant any other local, state, or federal funds appropriated for staff or operations.

(B) Any local law enforcement agency receiving property under this subsection shall submit an annual report to the local governing authority. The report shall be submitted with the agency's budget request and shall itemize the property received during the fiscal year and the utilization made thereof. (Code 1981, § 16-16-2, enacted by Ga. L. 1995, p. 1051, § 4; Ga. L. 2012, p. 1285, § 1/SB 350; Ga. L. 2014, p. 426, § 8/HB 770.)

The 2012 amendment, effective May 3, 2012, substituted "shall be" for "is" throughout subsection (a); substituted "shall be" for "are" in the introductory paragraph of subsection (a); and added the undesignated paragraph following paragraph (a)(3).

The 2014 amendment, effective July 1, 2014, inserted ", home invasion," in subsections (a) and (c) and in the introductory language of paragraph (e)(1).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2012, "or" was deleted preceding "nor" in paragraph (a)(3).

CHAPTER 17

PAYDAY LENDING

16-17-1. "Payday lending" defined; legislative findings; prohibited activity; no impairment of agencies with concurrent jurisdiction.

JUDICIAL DECISIONS

Lender's 49 percent economic interest. — In a class action suit seeking to hold a lender liable for payday loans, the trial court did not err in concluding that genuine issues of material fact existed as to whether the lender was the true lender of the loans made after May 14, 2004, because evidence was presented sufficient to create a genuine issue of material fact regarding whether the lender actually re-

ceived only a 49 percent economic interest for the lender's services and even if the lender did so, whether the lender nevertheless, by contrivance, device, or scheme, attempted to avoid the provisions of O.C.G.A. § 16-17-2(a). Ga. Cash Am. v. Greene, 318 Ga. App. 355, 734 S.E.2d 67 (2012).

16-17-2. Prohibition on loans of less than $3,000.00; exceptions; penalty for violations.

JUDICIAL DECISIONS

Summary judgment properly denied. — In a class action suit seeking to hold a lender liable for payday loans, the trial court did not err in concluding that genuine issues of material fact existed as to whether the lender was the true lender of the loans made after May 14, 2004, because evidence was presented sufficient to create a genuine issue of material fact regarding whether the lender actually received only a 49 percent economic interest for the lender's services and even if the lender did so, whether the lender nevertheless, by contrivance, device, or scheme, attempted to avoid the provisions of O.C.G.A. § 16-17-2(a). Ga. Cash Am. v. Greene, 318 Ga. App. 355, 734 S.E.2d 67 (2012).

Cited in Davis v. State, 754 S.E.2d 815, 2014 Ga. App. LEXIS 108 (2014).

16-17-6. Evidence and investigation in pursuit of prosecutions.

JUDICIAL DECISIONS

Cited in Davis v. State, 754 S.E.2d 815, 2014 Ga. App. LEXIS 108 (2014).